

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

76-1584

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 76 - 1584

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-against-

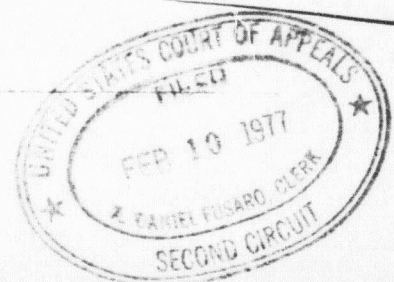
CLARA NEMES,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPELLANT'S APPENDIX

ORANS, ELSER & POLSTEIN
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CLARA NEMES

DOCKET ENTRIES

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
THE UNITED STATES, : JUDGE WYATT
vs. : 76 Cr. 0534
CLARA NEMES, :
Defendant. :
-----X

Proceedings

6/8/76 Filed Indictment.
6/17/76 Deft. (Atty. present) pleads not guilty. Deft.
ordered F/P. Bail at \$10,000 P.R.B. unsecured.
Deft. to surrender passport to AUSA. Case
assigned to Wyatt, J. as related to 76-cr-535
...Knapp, J.
6/17/76 Filed PRB in the Amount of \$10,000 Unsecured.
6/23/76 Filed Notice of Appearance.
7/1/76 Filed govt's notice of readiness for trial on
or after 8/21/76.
7/30/76 Filed Notice of Motion by deft Clara Nemes for
an order granting the deft relief, that the
attorney for the government be compelled to permit
discovery etc., rtble on 8/13/76.
8/02/76 Filed Deft's motion joining in motion of co-deft.
(Manlio S. Severino) to dismiss the indictment.
8/12/76 Filed Gov'ts. Affdvt. in opposition to Clara Nemes
motion for Bill of particulars.
8/12/76 Filed Gov'ts Memorandum of law in opposition to
Deft.s Request for Bill of particulars & discovery.

9/8/76 Filed Memo. End. on motion for dft. for discovery & inspection, dtd. 7/30/76. Granted in part & denied in part....Wyatt J. (mn)

9/8/76 Filed Memo. End. on motion for dft. for dismissal of indictment. Motion deniedWyatt J. (mn)

9/17/76 Filed Gov'ts Bill of Particulars.

9/27/76 Filed Gov'ts requests to charge.

9/30/76 Filed Gov'ts Amended Bill of Particulars.

9/28/76 Trial begun with a jury as to dfts. Manlio Severino & Clara Nemes.

9/29/76 Trial Cont'd

9/30/76 Trial Cont'd

10/1/76 Trial Cont'd

10/5/76 Trial Cont'd

10/6/76 Trial Cont'd

10/7/76 Trial Cont'd

10/13/76 Dft. Manlio S. Severino motion for a mistrial "Granted" Trial Cont'd as to dft. Clara Nemes Only (count 1).....Wyatt J.

10/14/76 Trial Cont'd Both Sides Rest. Summations.

10/15/76 Trial Cont'd. Charge of the Court. Jury finds the Dft. Clara Nemes Guilty (Count 1) Sentence 12/3/76. Pre Sent. Invest. Ordered. Bail Cont'dWyatt J.

12/3/76 Filed Judgment & Commitment (Atty. Stephen Russo Present) The dft. is hereby committed to the custody of the Atty. Gen. or his authorized representative for imprisonment for a period of TWO (2) YEARS, on count 1, pur. to Title 18 Sec. 3651, U.S. Code, on condition the dft. be confined in a jail type institution for a period of TWO (2) months, the execution of the remainder

of the sentence of imprisonment is suspended and the dft.is placed on probation for a period of TWO (2) YEARS subject to her right to appeal. Dft. cont'd on present bail of \$10,000 PRB pending outcome of appeal.....Wyatt J. Issued Commitment 12/8/76.

12/13/76	Filed transcript of proceedings, dated 9/28, 29, 30, and 10/1, 5, 1976.
12/13/76	Filed transcript of record of proceedings dated 10/6, 7, 8, 12, 13, 14, 1976.
12/13/76	Filed transcript of record of proceedings dated 10/15/76.
12/13/76	Filed Notice of Appeal from the judgment dtd. 12/3/76. (mailed notice)
1/18/77	Filed Notice of Supplemental Record to the USCA. (1st)

MANLIO S. SEVERINO

DOCKET ENTRIES

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

THE UNITED STATES,	:	
vs.	:	JUDGE WYATT
MANLIO S. SEVERINO,	:	76 Cr. 0534
Defendant.	:	

-----x

Proceedings

6/8/76	Filed Indictment.
6/17/76	Deft. (Atty. present) pleads not guilty. Bail \$25,000 secured by \$2,500 cash cont'd. Case assigned to Wyatt, J. as related to 76-cr-535...Knapp, J.
6/17/76	Pre-Trial Conference Held. Trial 9/27/76.
6/18/76	Filed Appearance Bond in the Amt. of \$2,500. Cash with the Clerk SDNY receipt #071945. (M.19-1-4521)
6/29/76	Filed Notice of appearance of Gilberg & Gilberg as attorneys for deft.
7/1/76	Filed Govt's notice of readiness for trial on or after 8/21/76.
7/30/76	Filed Affidavit and Notice of motion by deft Manlio S. Severino for an order dismissing the instant indictment etc, rtble before Wyatt, J. on 8/13/76.
7/30/76	Filed Deft. Severino's memorandum of law as indicated.
8/4/76	Filed Deft's affidavit & notice of motion to dismiss the indictment, for suppression of evidence, a bill of particulars, discovery & inspection, Brady material, ret. 8/13/76.
8/12/76	Filed Govt's Affidavit in opposition to deft. M.S. Severino's motion for bill of particulars.

8/12/76 Filed Gov'ts Memorandum of law in Opposition to Dfts. request for Bill of Particulars & discovery.

9/8/76 Filed Memo. End. on motion for dft. for various forms of relief, separately considered. Granted in part & Denied in part....Wyatt J. (mn)

9/14/76 Filed Memo. End. on letter of Dfts. Counsel dated 9/7/76. The letter is treated as a motion to postpone the trial, now fixed for 9/27/76... Motion Denied....Wyatt J. (mn)

9/17/76 Filed Gov'ts Bill of Particulars.

9/27/76 Filed Gov'ts requests to charge.

9/28/76 Filed Dfts. Notice of Motion and supporting affdvt. to modify Subpoena...Ret. 9/28/76....

9/30/76 Filed Gov'ts Amended Bill of Particulars

10/4/76 Filed Memo. End. on motion dtd. 9/28/76. Motion Granted as indicated....Wyatt J. (mn)

9/28/76 Trial begun with a jury as to dfts. Manlio Severino and Clara Nemes.

9/29/76 Trial Cont'd

9/30/76 Trial Cont'd

10/1/76 Trial Cont'd

10/5/76 Trial Cont'd

10/6/76 Trial Cont'd

10/7/76 Trial Cont'd

10/13/76 Dft. Manlio S. Severino motion for a mistrial "Granted" Trial Cont'd as to Dft. Clara Nemes only (Count 1)....Wyatt J.

11/4/76 Pre-Trial Conference Held. Trial as to Manlio Severino, November 29, 1976....Wyatt J.

11/9/76 Filed transcript of record of proceedings, dated 9/29/76.

11/30/76 Filed letter to Judge Wyatt from Sidney M. Cohen, M.D. Neurological Institute, 710 W. 168th Street, N.Y.C. 10032. Re: Report of Consultation performed.

12/1/76 Filed information and waiver of Indictment. (Superseding) Deft. and atty. David Gilberg present. Court enters plea of not guilty. Deft. withdraws his plea of not guilty and pleads guilty to cts. 1 & 2 of the information. Plea accepted. P.S.I. Ordered. Sentence set for 1/7/77 at 2:30 p.m. in Room 312. Bail continued at \$25,000 secured by \$2,500 cash. Bail limits to include state of Florida.... Wyatt, J..

11/26/76 Filed Order that examination be conducted at Neurological Institute of Columbia Presbyterian Hospital, 710 W. 168th Street and that the neurological surgeon submit report as to dfts. physical condition and capacity to stand trial.Wyatt J. (mn)

12/13/76 Filed transcript of record of proceedings, dated 9/28, 29,30, and 10/1, 5, 1976.

12/13/76 Filed transcript of record of proceedings, dated 10/6, 7, 8, 12, 13, 14, 1976.

12/13/76 Filed transcript of record of proceedings, dated 10/15/76.

1/11/77 Filed Judgment and Commitment (77,177) (Atty. Michael Gilberg Present) The Dft. is hereby committed to the custody of the Atty. Gen. or his authorized representative for imprisonment for a period of FIVE (5) YEARS on Count 1., pur. to T.18 Sec. 3651, U.S.C., on condition the dft. be confined in jail type institution for a period of FIVE (5) MONTHS, the execution of the remainder of the sentence of imprisonment is suspended and the dft. is placed on Unsupervised probation for a period of ONE (1) MONTH to commence after the dft. as served his prison sentence. On Count 2, the dft. is fined \$5,000. The fine is to be a committed fine and the dft. is to surrender on Monday, January 31, 1977 in Room 506 at 10:30 a.m. Dft.'s bail of \$25,000 secured by \$2,500 cash is extended up until January 31, 1977 when the dft. surrenders. Bail limits are also to include the State of Florida....Wyatt J. Issued Commitment 1/13/77. (This Judgment is for S-76-534)

1/11/77

Dft. Manlio Severino - Dft. & Atty. Mr.
Gilberg present w/AUSA George Wilson. Upon
Dfts. motion, this indictment is dismissed
as to said dft. only with the consent of the
govt.....Wyatt J.

1/12/77

Filed Notice of Certification of Record to the
U.S.C.A.

LAWRENCE J. SEVERINO

DOCKET ENTRIES

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

THE UNITED STATES,	:	JUDGE WYATT
vs.	:	76 Cr. 0534
LAWRENCE J. SEVERINO,	:	
Defendant.	:	

-----X

Proceedings

6/8/76	Filed Indictment.
6/17/76	Deft. (Atty. present) pleads not guilty. Bail at \$10,000 P.R.B. (unsecured). Deft. to surrender passport to AUSA. Case assigned to Wyatt, J. as related to 76-cr-535....Knapp, J.
6/17/76	Filed PRB in the Amt. of \$10,000. Unsecured.
7/1/76	Filed govt's notice of rediness for trial on or after 8/21/76.
8/12/76	Filed Gov'ts. Memorandum of Law in Opposition to Dfts. request for Bill of Particulars & discovery.
8/17/76	Filed Dft. Notice of Motion for order granting discovery & inspection and a bill of Particulars, Ret. 8/27/76 at 2:30 p.m. Room 905
8/17/76	Filed Dfts. Memorandum of law in support of dft's. request for a witness list.
8/27/76	Motions argued. Lawrence Severino severed from trial.
9/8/76	Filed Dfts. Reply Memorandum of Law in connection with dfts. motions for dismissal of Indictment or severance.

9/8/76 Filed Govts. affidavit in opposition to dfts. motion to dismiss Indictment or to sever his trial.

9/8/76 Filed Memo. End. on dfts. motion for dismissal of indictment. dtd. 7/30/76. Motion is denied except as to a severance of the trial of Lawrence, which is granted. Trial of Manlio Severino and Nemes will commence on 9/27/76 at 9:30 in room 905. Trial of Lawrence will commence thereafter at a time fixed....Wyatt J. (mn)

9/8/76 Filed Gov'ts Affdvt. in opposition to dfts. motion for Bill of Particulars & Discovery.

9/8/76 Filed Memo. End. on dfts. motion (8/17/76) for discovery and inspection & Bill of particulars. Granted in part & denied in part....Wyatt J. (mn)

9/17/76 Filed Gov'ts. Bill of Particulars

9/27/76 Filed Gov'ts request to charge.

9/30/76 Filed Gov'ts Amended Bill of Particulars.

12/13/76 Filed transcript of record of proceedings, dated 9/28, 29, 30 and 10/15/76

12/13/76 Filed transcript of record of proceedings, dated 10/6, 7, 8, 12, 13, 14, 1976

12/13/76 Filed transcript of record of proceedings, dated 10/15/76

INDICTMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	:x	
-v-	:	<u>INDICTMENT</u>
MANLIO S. SEVERINO,	:	76 Cr. 534 (IBW)
LAWRENCE J. SEVERINO, and	:	
CLARA NEMES,	:	
Defendants.	:	
	:x	

The Grand Jury charges:

1. On July 30, 1965 Titles XVIII and XIX of the Social Security Act (the Health Insurance for the Aged Act, (hereinafter "Medicare Act"), and the Medicaid Act) were enacted creating the Medicare and Medicaid programs.
2. The Medicare program is administered by the Social Security Administration of the United States Department of Health, Education and Welfare ("HEW") and provides for basic protection for hospital and post-hospital services for individuals age 65 or over who are entitled to retirement benefits or individuals under age 65 who are entitled to retirement benefits due to disability. Reimbursement of the entire cost of services is made by HEW.
3. Pursuant to the Medicaid Program, HEW shares with each state the cost of medical services to families with dependent children and to aged, blind, or permanently and

totally disabled individuals whose income and resources are insufficient to meet the costs of necessary medical services. The Medicaid program further provides for rehabilitative and other services to help such families and individuals attain or retain capability for independence and self-care.

4. Pursuant to the Medicaid Act each state must promulgate a plan for Medical assistance and administer its own Medicaid programs. The State of New York is reimbursed by HEW at the rate of fifty cents for each dollar paid for federally eligible Medicaid claims.

5. Under both the Medicare and Medicaid programs duly certified nursing homes providing services to patients who are eligible for either Medicare or Medicaid coverage, must submit annually a cost report for each program, (For Medicare: "Extended Care Facility - Statistical and Other Data", SSA Form 1750, ["Form SSA 1750"]; and for Medicaid: "Annual Report of Long-Term Care Facility", Form HE-2P, ["Form HE-2P"])). Each cost report lists patient statistics and all costs and expenditures incurred in the operation of the nursing home and is used to compute the rate per patient-day at which the nursing home will be paid under each program.

6. The Form SSA 1750 for the Medicare program is submitted to a fiscal intermediary, which, pursuant to a contract with the Social Security Administration, processes claims, determines the rate of reimbursement and distributes funds.

7. The Form HE-2P for the Medicaid program is submitted to the New York State Department of Health for processing where it is analyzed and a rate of reimbursement is determined therefrom. This rate governs the reimbursement of a nursing home's Medicaid claims.

8. Both the fiscal intermediary and the State of New York are reimbursed by HEW.

9. At all times relevant the defendant MANLIO SEVERINO, was the business manager of, and operated the Sprain Brook Manor Nursing Home ("Sprain Brook") located at 77 Jackson Avenue, Scarsdale, New York in the Southern District of New York. The defendant CLARA NEMES was the bookkeeper for Sprain Brook. Sprain Brook was owned by the defendant LAWRENCE J. SEVERINO, and other members of the Severino family until on or about October 31, 1973.

10. At all times relevant, Travelers Insurance Company, Hartford, Connecticut ("Travelers") had a contract with HEW to act as fiscal intermediary between Sprain Brook and the Social Security Administration in the distribution of funds pursuant to claims submitted under the Medicare Act.

11. Sprain Brook submitted a Form SSA 1750 for each of the years 1971, 1972 and 1973 to Travelers and a Form HE2-P for each of the years 1971 and 1972 to the New York State Department of Health.

COUNT ONE

The Grand Jury further charges:

12. From on or about January 1, 1971, up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, MANLIO S. SEVERINO, LAWRENCE J. SEVERINO and CLARA NEMES, the defendants, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other and with persons to the Grand Jury known and unknown, to defraud the United States and its departments and agencies in connection with the performance of their lawful governmental functions by obstructing and hindering the Department of Health, Education and Welfare in administering the Medicare and Medicaid Acts and to violate Title 18, United States Code, Sections 287 and 1001.

13. It was a part of said conspiracy that the defendants and their co-conspirators would and did agree to defraud the United States of its lawful right to have HEW administer the provisions of the Medicare and the Medicaid Acts fairly and impartially, without undue influence, unlawful inducement, false representation, favor or fraud, by causing both Travelers and the State of New York to file claims for reimbursement under said Medicare and Medicaid Acts respectively, which were based in part upon Forms, SSA-1750 and HE-2P and other documents, which were materially false, fictitious and fraudulent.

14. It was further a part of said conspiracy that the defendants and their co-conspirators unlawfully, wilfully and knowingly would and did make and cause to be made false claims upon and against HEW, an agency and department of the United States.

15. It was further a part of said conspiracy that the defendants and their co-conspirators, in matters within the jurisdiction of a department and agency of the United States, that is, HEW, unlawfully, wilfully and knowingly would and did falsify, conceal and cover up, and would and did cause to be falsified, concealed and covered up by trick, scheme and device, material facts and would and did make and cause to be made false, fictitious and fraudulent statements and representations and would and did make and use and cause to be made and used false writings and documents knowing the same to contain false, fictitious and fraudulent statements and entries.

16. Among the various means whereby the defendants and their co-conspirators would and did carry out the objects of said conspiracy were the following:

(a) At all times relevant herein, defendant MANLIO S. SEVERINO operated Sprain Brook. The owners of Sprain Brook were defendant MANLIO SEVERINO's son DOCTOR LAWRENCE J. SEVERINO, his daughter, Joan Severino Paresi; and his wife

Annette Severino.

(b) Defendants and their co-conspirators would and did falsify and overstate various expenditures, costs and expenses in the books and records of Sprain Brook.

(c) Defendants and their co-conspirators would and did disguise in the books and records of Sprain Brook expenses which were unrelated to Sprain Brook and in many cases personal to them.

(d) Defendants and their co-conspirators would and did charge payroll expenses for salaries of employees who did little or no work at Sprain Brook.

(e) Defendants and their co-conspirators would and did prepare and file on behalf of Sprain Brook a Form SSS-1750 and other documents for each of the years 1971, 1972 and 1973 with Travelers and a Form HE-2P for each of the years 1971 and 1972 with the New York State Department of Health.

(f) Said documents would and did show a total of approximately \$276,000 in increased fraudulent costs and expenditures as a result of false entries, among others referred to in subparagraphs (a) through (d) supra in order to increase the rate of reimbursement for Medicare and Medicaid claims.

(g) In Forms SSA-1750 and HE-2P filed for the year 1973 the 1973 defendants and their co-conspirators would and did fail to disclose the lack of an arms-length relationship between Sprain Brook and Limpio Services, Inc., a sham

corporation which was formed to show an increase in the costs of Sprain Brook.

(h) Defendant and his co-conspirators would and did submit Owners Compensation Evaluation Forms to Travelers which falsely showed that certain owners were employed when they were not and failed to disclose that other owners were receiving compensation.

OVERT ACTS

In furtherance of the said conspiracy and to effect the objects thereof, the defendants and their co-conspirators committed the following overt acts, among others, in the Southern District of New York and elsewhere:

1. During July 1972 defendant MANLIO S. SEVERINO sent a Form SSA-1750 to Travelers.
2. During December of 1972, defendant MANLIO S. SEVERINO signed a signature card as "Salvatore Severino, Treasurer", for a checking account in the name Limpio Services, Inc.
3. During December 1972 and January 1973, defendant MANLIO S. SEVERINO had a conversation with another about Limpio Services, Inc.
4. During the period 1971 through 1973 defendant MANLIO S. SEVERINO had numerous conversations with defendants LAWRENCE J. SEVERINO and CLARA NEMES and his other co-conspirators about falsifying the Forms SSA 1750 and HE-2P for Sprain Brook.

(Title 18, United States Code, Section 371).

The Grand Jury further charges:

17. Paragraphs 1 through 11 of this indictment are repeated and realleged and incorporated in each of Counts Two through Six as though fully set forth herein.

18. On or about the dates set forth below in the Southern District of New York and elsewhere, MANLIO S. SEVERINO, the defendant, unlawfully, wilfully and knowingly did make and present, and cause to be made and presented to the United States Department of Health, Education and Welfare, a department and agency of the United States, for payment, certain claims upon and against the United States, to wit, by submitting and causing to be submitted, various "Forms SSA-1750 and HE-2P" to the agencies set forth below, for reimbursement under programs pursuant to the Social Security Act of 1965, as amended, which forms contained a statement of the costs of operating Sprain Brook when in truth and in fact, as he then and there well knew, said claims were false, fictitious and fraudulent in that the costs were inflated so as to result in a higher rate of reimbursement.

<u>COUNT</u>	<u>DATE SUBMITTED</u>	<u>TYPE OF CLAIM</u>	<u>WHERE SUBMITTED</u>	<u>APPROXIMATE AMT. OF OVERSTATED COSTS AND EXPENDITURES</u>
Two	May 1, 1972	HE-2P for 1971 Medicaid Services	New York State Department of Health	\$61,066.
Three	May 23, 1972	SSA-1750 for 1971 Medicare Services	Travelers Insurance Company	\$61,066.
Four	April 27, 1973	HE-2P for 1972 Medicaid Services	New York State Department of Health	\$108,317.
Five	May 1, 1973	SSA-1750 for 1972 Medicare Services	Travelers Insurance Company	\$108,317.
Six	April 29, 1974	SSA-1750 for 1973 Medicare Service	Travelers Insurance Company	\$106,209.

(Title 18, United States Code, Sections 287 and 2.)

COUNTS SEVEN THROUGH ELEVEN

The Grand Jury further charges:

19. Paragraphs 1 through 11 of this indictment are repeated, realleged and incorporated in each of Counts Seven through Eleven as though fully set forth herein.

20. On or about the dates set forth below in the Southern District of New York and elsewhere, in a matter within the jurisdiction of a department and agency of the United States, to wit, the United States Department of Health, Education and Welfare, MANLIO S. SEVERINO, the defendant, unlawfully, wilfully and knowingly did falsify, conceal and cover-up, and cause to be falsified, concealed and covered up,

by trick, scheme and device, material facts, and did make and cause to be made false, fictitious and fraudulent statements and representations and did make and cause to be made and did use and cause to be used false writings and documents knowing the same to contain false, fictitious and fraudulent statements and entries, in that the defendant MANLIO S. SEVERINO submitted and caused to be submitted to, and in a matter within the jurisdiction of, HEW various false and fraudulent Forms SSA-1750 and HE-2P for Sprain Brook to the agencies set forth below in which defendant certified and caused to be certified that the costs and expenditures contained therein were true and correct, when in truth and in fact, as the defendant then and there well knew, said certifications were false in that the claimed costs and expenditures were overstated in the approximate amounts set forth below.

<u>COUNT</u>	<u>DATE SUBMITTED</u>	<u>NATURE OF SUBMISSION</u>	<u>APPROXIMATE AMOUNT OF OVERSTATED COSTS AND EXPENDITURES</u>
Seven	May 1, 1972	HE-2P for 1971 Medicaid to New York State Department of Health	\$61,066.
Eight	May 23, 1972	SSA-1750 for 1971 Medicare to Travelers Insurance Company	\$61,066.
Nine	April 27, 1973	HE-2P for 1972 Medicaid to New York State Department of Health	\$108,317.
Ten	May 1, 1973	SSA-1750 for 1972 Medicare to Travelers Insurance Company	\$108,317.
Eleven	April 29, 1974	SSA-1750 for 1973 Medicare to Travelers Insurance Company	\$106,209.

(Title 18, United States Code, Sections 1001. and 2.)

COUNTS TWELVE AND THIRTEEN

The Grand Jury further charges:

21. Paragraphs 1 through 11 of this indictment are repeated, realleged and incorporated in each of Counts Twelve and Thirteen as though fully set forth herein.

22. On or about the dates set forth below in the Southern District of New York and elsewhere, in a matter within the jurisdiction of a department and agency of the United States, to wit, the United States Department of Health, Education and Welfare, LAWRENCE J. SEVERINO, the defendant, unlawfully, willfully and knowingly did make and cause to be made false, fictitious and fraudulent statements and representations in that LAWRENCE J. SEVERINO, the defendant, did submit and cause to be submitted to the Travelers Insurance Company in its capacity as fiscal intermediary for HEW, an Owners Compensation Evaluation Form for his Medicare-certified facility, the Sprain Brook Manor Nursing Home in which he represented that he was employed in the positions and for the periods set forth below, when in truth and in fact, as the defendant then and there well knew, said statements and representations were false.

<u>COUNT</u>	<u>DATE SUBMITTED</u>	<u>POSITION</u>	<u>HOURS PER WEEK WORKED</u>
Twelve	May 23, 1972	Medical Director and Assistant Business Manager	12
Thirteen	April 29, 1974	Medical Director and Assistant Business Manager	25

(Title 18, United States Code, Sections 1001 and 2.)

COUNT FOURTEEN

The Grand Jury further charges:

23. Paragraphs 1 through 11 of this indictment are repeated, realleged and incorporated in Count Fourteen as though fully set forth herein.

24. On or about May 1, 1973, in the Southern District of New York and elsewhere, in a matter within the jurisdiction of a department and agency of the United States, to wit, the United States Department of Health, Education and Welfare, MANLIO S. SEVERINO, the defendant, unlawfully, wilfully and knowingly did make and cause to be made false, fictitious and fraudulent statements and representations in that MANLIO S. SEVERINO, the defendant, did submit and cause to be submitted to the Travelers Insurance Company, in its capacity as fiscal intermediary, an Owners Compensation Evaluation Form for a Medicare-certified facility, the Sprain Brook Manor Nursing Home in which he represented that the expense figures of the facility did not contain remuneration paid or imputed to any one other than defendant who was related to an owner, when in truth and in fact, as the defendant then and there well knew, said statements and representations were false.

(Title 18, United States Code, Sections 1001 and 2.)

FOREMAN

ROBERT B. FISKE, JR.
United States Attorney

MANLIO S. SEVERINO

NOTICE OF MOTION

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA,

Indictment
76 Cr 534

-v-

NOTICE OF MOTION

MANLIO S. SEVERINO,
LAWRENCE J. SEVERINO, and
CLARA NEMES ,

Defendants.
-----x

The defendant, MANLIO S. SEVERINO, moves:

1) That the indictment be dismissed on the
ground:

- a) that the same does not state facts
sufficient to constitute an offense
against the United States;
- b) that all or part of the acts charged
are time barred;
- c) that the evidence presented before
the Grand Jury was based upon
"tainted" records illegally secured.

2) That certain property of which defendant,
Manlio S. Severino had custody or control, having been un-
lawfully seized and taken or obtained without his consent
by the United States of America, be returned to him and
that the same be suppressed as evidence against him in any
criminal proceeding.

3) That certain records obtained by the
prosecution, which the defendant had delivered to a New
York State Grand Jury, and which were obtained by the federal
government without his knowledge or consent, be returned to
him.

4) That defendant having been compelled by
compulsion of subpoena to appear before a Westchester County
April A Grand Jury, that he secured immunity from prosecution,
both in federal and state courts.

5) That the United States Attorney be directed to furnish to defendant's counsel a bill of particulars in response to that demanded heretofore under date of July 14, 1976.

6) That discovery and inspection be granted of those items set forth in a notice entitled "Demand for Discovery and Inspection" heretofore served upon the United States Attorney and dated July 14, 1976.

7) That Brady material be furnished to defendant's counsel.

8) That the Court direct a hearing relative to any of the aforementioned as in the opinion of the Court may be just and proper.

9) That the Court grant such other and further relief as may be just in the premises.

This motion will be returnable before Hon. Inzer B. Wyatt on August 13, 1976 at the United States Courthouse, Foley Square, New York City, New York, in Courtroom 501 thereof, at 2:30 P.M.

Answering affidavits, if any, are to be served at least five days before the return date.

DATED: July 27, 1976

GILBERG & GILBERG

By: _____

For the Firm
Attorneys for Defendant
Manlio S. Severino
Office & P.O. Address
22 West First Street
Mount Vernon, N.Y. 10550
914 664-3700 212 994-1007

TO: UNITED STATES ATTORNEY
Southern District of New York
United States Courthouse
Foley Square
New York, N.Y. 10007

ROBERT B. MORVILLO, Esq.
Attorney for defendant
Lawrence J. Severino
1290 Avenue of the Americas
New York, N.Y.

STEPHEN A. RUSSO, Esq.
Attorney for defendant
Clara Nemes
600 Third Avenue
New York, N.Y. 10016

CLARA NEMES'

NOTICE OF MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

NOTICE OF MOTION

CLARA NEMES, et.al.,

76 Cr. 534 (ISW)

Defendants.

S I R S:

PLEASE TAKE NOTICE that the defendant CLARA NEMES hereby joins in the motion filed on July 27, 1976, on behalf of the defendant, Manlio S. Severino with regard to those aspects of the motion which seek dismissal of the indictment on the grounds that

(a) the indictment does not state facts sufficient to constitute an offense against the United States;

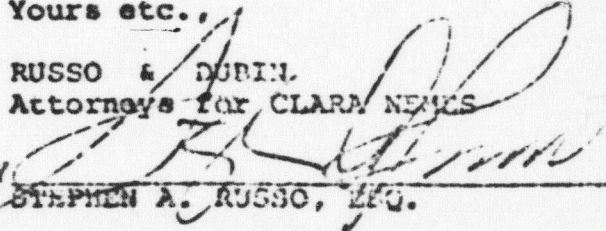
(b) that all or part of the acts charged are time-barred; and

(c) that the defendant CLARA NEMES received immunity from prosecution pursuant to New York's C.P.L. §190.40 and as such is immune from prosecution of this indictment.

Dated: New York, N.Y.
July 29, 1976

Yours etc.,

RUSSO & DUBIN
Attorneys for CLARA NEMES

By 
STEPHEN A. RUSSO, Esq.

To: Hon. Robert B. Fiske, Jr.
United States Attorney
and
U.S. District Court, S.D.N.Y.

AFFIDAVIT OF GEORGE E. WILSON

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA, :
 :
Plaintiff, : AFFIDAVIT IN OPPOSITION
 : (CLARA NEMES)
-against- :
 : 76 Cr. 534 (IBW)
MANLIO S. SEVERINO, LAWRENCE J. :
SEVERINO and CLARA NEMES, :
 :
Defendants. :
-----X

STATE OF NEW YORK)
COUNTY OF NEW YORK :
SOUTHERN DISTRICT OF NEW YORK)

GEORGE E. WILSON, being duly sworn, deposes and
says:

1. I am an Assistant United States Attorney in
the office of Robert B. Fiske, Jr., United States Attorney
for the Southern District of New York, and as such I am
fully familiar with the facts of the above-captioned case.
This affidavit is submitted in opposition to defendant's
motion for a Bill of Particulars and discovery and inspec-
tion pursuant to F.R. Crim. P. 7(f) and .16 and to dismiss
the indictment.

2. On June 8, 1976 indictment 76 Cr. 534 was
filed charging defendant Clara Nemes in one count with cons-
piracy in violation of Title 18, United States Code, Section
371.

3. The government's position is as follows (keyed
to numbering in defendant's motion):

I. Discovery and Inspection

A - consent - to the extent obtainable by the government. We have not seen nor have we attempted to obtain written or recorded statements or testimony by Nemes to any state grand jury or investigators and decline to do so since such material is tainted by state immunity.

B - consent

C - oppose - see "A" supra

D - (1) through (8) - consent - this material may be inspected and copied upon reasonable notice given to Michael D. Cesario at (264-0500).

D(9) - consent - upon a showing by affidavit of the nature and extent of Nemes ownership or affiliation with Limpio.

D(10)(11) - consent - Brady material will be furnished no later than 10 days prior to trial.

D(12)(13) - oppose

II. Bill of Particulars

A - consent - to the extent of names of co-conspirators, otherwise oppose.

B - Oppose - calls for theory

C - oppose - apparent on face of indictment, therefore beyond the scope of a bill of particulars.

D(1) through (5) - oppose - to the extent that this information is not apparent from the face of the indictment and from the broad discovery consented to at ID, supra. Beyond that the demand calls for evidence and theory and is beyond the scope of a bill of particulars.

E(1) - oppose - beyond the scope

E(2)(3) - consent to the extent of furnishing names and approximate dates.

III. Motion to Dismiss

4. Defendant Nemes seeks to obtain dismissal of the indictment on grounds identical to those raised by defendant Manlio S. Severino. The government opposes those motions on the same grounds articulated in its affidavit in opposition to defendant Manlio S. Severino's motion to which the court's attention is respectfully invited.

5. The government has no specific knowledge concerning any grant of immunity by the State of New York pursuant to New York C.P.L. §190.40 to defendant Nemes. We have not seen or used her testimony before the state grand jury or to any State investigators.

6. Moreover, defendant Nemes' invocation of her Fifth Amendment privilege on June 4, 1976 before a federal grand jury in the Southern District of New York belies any serious belief on her part that she had been immunized from federal prosecution.

WHEREFORE, defendant Nemes' motions should be denied except as consented to.

GEORGE E. WILSON
Assistant United States Attorney

Sworn to before me this
day of August, 1976

MEMORANDUM AND ORDER
ON MOTION FOR DISMISSAL

UNITED STATES OF AMERICA

-v-

MANLIO SEVERINO,
LAWRENCE SEVERINO, and
CLARA NEMES, Defendants.

76 Cr. 534

This is a motion for defendant Nemes for dismissal of the indictment. The grounds stated in defendant's notice of motion are the same as those relied on by defendant Manlio in a separate motion.

If, however, defendant Nemes' claim of immunity is based not only on the production of records (to which that of defendant Manlio Severino is restricted) but on actual testimony in a state proceeding, the government would be barred from making any use of that testimony, but would not be barred from prosecuting her without making any use of it. United States v. Kelly, 445 F.2d 1285, 1287 (2d Cir. 1971), cert. denied 406 U.S. 962 (1972). The government here has denied any use, or even receipt, of such testimony as well as any desire to make use of it in the future.

For the reasons stated in an order with memorandum opinion being filed to decide the motion of Manlio, this motion for defendant Nemes is denied.

SO ORDERED.

Dated: September 7, 1976

INZER B. WYATT
United States District Judge

GOVERNMENT'S CLOSING
ARGUMENT

1:30 p.m.

July 1

2

AFTERNOON SESSION

3

1:30 p.m.

4

(Jury present.)

5

THE COURT: Madame Foreman, ladies and gentlemen of the jury, the government is permitted to make the first closing argument to the jury, to be followed by the closing argument for the defendant, and then the government, because it has the burden of proof, is given a few minutes in rebuttal.

11

Mr. Wilson, will you address the jury?

12

MR. WILSON: If it please the Court, Mr. Russo, Madam Forelady and ladies and gentlemen of the jury, when I started out at the beginning of this case a couple of weeks ago I made an opening statement which was designed to lay out for you a road map and, as Mr. Russo so aptly put it to present to you a promissory note as to what the case would be about.

19

I told you at that time that this is a paper case involving a lot of documents and a lot of technical terms, and I hope that during the course of this trial, at the risk of insulting your intelligence sometimes, that I have not been too basic in defining terms as we go along and I hope on the other hand that we have not gotten too technical.

25

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1 jglt 772

2 You see in evidence here a pile of documents and
3 a lot of these documents are in evidence to support other
4 pieces of evidence which would be brought out either on trial
5 or in argument. Unfortunately Mr. Severino is no longer
6 with us, and a good part of this case, of course, applies to
7 him.

8 Now, when we started this case, and a good part
9 of the evidence in this case was geared toward proving the
10 case against Manlio Severino. He is no longer with us. He
11 will get his opportunity at a later trial before a new jury.
12 Today it is your duty to determine the guilt or innocence
13 of Mrs. Nemes.

14 In summarizing what we feel you may find from
15 the evidence, and as the Judge will instruct you, it is your
16 recollection of the evidence that controls. I am going to,
17 because I feel I have to, answer a lot of questions which
18 were raised while Mr. Severino was still on trial. A lot
19 of things that I will cover will relate to Mr. Severino.

20 Now, tomorrow morning Judge Wyatt will charge
21 you on the law of this case. He will tell you what the group
22 rules are for you in deciding the evidence, and among one
23 of the things that we expect Judge Wyatt to tell you is about
24 the law of conspiracy, and among many other things that is
25 one conspirator doesn't have to know everything every other

1 hgl 772

2 conspirator does.

3 And also, one conspirator does not have to be
4 involved to as great an extent as every other conspirator.
5 There can be different degrees of participation.

6 The thing you have to find first is was there a
7 conspiracy, that is, was there an agreement, any type of
8 agreement, an understood agreement, a meeting of the minds
9 between two or more people to cheat the government, to
10 defraud the government, to make false statements and false
11 claims.

12 Once having determined that, you have to find
13 whether a particular defendant, in this case for you whether
14 Clara Nemes became a member of that conspiracy. And the
15 degree of her participation, once you find she participated
16 during the conspiracy, is not important.

17 What I want to do is lay out in as much a
18 chronological order as possible, what we think happened, what
19 the evidence shows happened, in this three-year saga of
20 Sprain Brook Manor Nursing Home as run by the Severinos,
21 specifically Marlio Severino.

22 Judge Wyatt read the indictment to you at the
23 beginning of the trial. Among the means of carrying forth
24 this conspiracy -- there were a lot of different things.
25 Among these things were padding the expenses of the Sprain

1 jglt 77-

2 Brook Manor operations to make it seem that it cost more
3 to operate than it actually did, and this had an effect on
4 the rate of return you get from the State. And they did
5 this several ways. They jacked up expenses actually
6 incurred, they increased them, they added on unrelated
7 expenses, they had what I think you can call no shows on
8 the payroll, that is, people who weren't really employees
9 but were in fact in this case partners in the business
10 receiving money. And they actually were shown as receiving
11 it as employees, therefore that becomes an expense and not
12 something you have to pay taxes on.

13 And also, the failure or the covering up, and
14 the evidence is quite extensive in this case, of a related
15 corporation, which we contend you may find was just a sham,
16 a fake, this Limpio Services Company, in order to show a
17 contract price, in order to show a profit.

18 Now, these are among the means with which this
19 conspiracy was carried out, and we contend that the conspira-
20 cied started when the nursing home first started or really about
21 the time that Percy Karlin and Manlio Severino got together
22 to do that first cost report, and it continued on, it
23 continued on as a matter of fact almost up to the time of
24 the indictment.

25 Now, you may find that all the little incidents

1 jglt 775

2 that happened whereby the conspirators tried to cover
3 their trail can be considered as at least showing what was
4 in their minds.

5 One of the things that I think that common
6 sense tells you is that you cannot look inside a person's
7 head and tell what they are thinking. When you are dealing
8 with crimes like this, where you have to deal with persons'
9 knowledge and state of mind, you have to use circumstantial
10 evidence, you have to look at all the facts. Very rarely
11 will a person say, "I intend to lie, cheat and steal,"
12 or, "I intend to commit a murder; I intend to rob a bank."

13 You have to look at all the things a person
14 does, A, B, C and D, and from that derive fact E, which is
15 really the fact you are looking for, for that person's state
16 of mind.

17 I think that the evidence will show, and you
18 may find, that the course of events, the laundering of money
19 the opening of fictitious bank accounts, forger of signatures
20 the shuffling of and backdating of papers and certificates
21 and things like that show state of mind. It is not consis-
22 tent with the actions of innocent people.

23 Now, the third element, of course, of the
24 conspiracy that I did not mention, is overt acts. Remember
25 Judge Wyatt read those to you. They are not exclusive of

1 jglt 77;

2 into business.

3 ~~During none of these years was there any~~
4 ~~disclosure to the government that Limpio Services was owned~~
5 ~~and controlled by Manlio Severino and other persons.~~ And
6 you have heard testimony that varying amounts since 1971,
7 about \$12,000, in 1972 about \$27,000, and in 1973 in the
8 neighborhood of 30 to 40 thousand dollars, as near as Mr.
9 Karlin could estimate, was over and above the actual cost of
10 performing cleaning services in the Sprain Brook Manor
11 Home.

12 And in addition in 1973 to the profit that this
13 corporation, controlled by Manlio Severino generated, also
14 is about \$12,000 according to Mr. Karlin's testimony that
15 was stolen from the payroll by Mr. Severino in the form of
16 ~~a couple of hundred dollar bills every week via Mrs. Nemes.~~

17 The second item that is common to all three
18 years is the land rent.

19 You recall the testimony that there is \$8,000
20 paid in land rent each year, and we will go over that in a
21 little more detail in a moment. Each year from '71 to '72
22 and '73 being a partial year, ten months out of 12 is
23 somewhat less, \$666.

24 The third thing which is common to all three
25 years is the wages. In 1971, \$11,000 went to Lawrence

1 jglt 770

2 Severino, who was purportedly the medical director and
3 assistant business manager.

4 And in 1972, to Lawrence Severino and Joan
5 Parisi, Lawrence Severino; again being shown as the assistant
6 business manager, and I believe medical director, and Joan
7 Parisi, I think the evidence will show, was carried as a
8 business manager. And this is set forth on the compensation
9 statement. Or it may not be. I think in '72 the evidence
10 shows that neither one were mentioned at all.

11 In 1973 -- well, in '72 the figures are \$5,875
12 for Joan, \$26,000 to Lawrence. And in '73, \$22,500 apiece
13 for Lawrence and Joan and \$8,500 for Annette, Manlio
14 Severino's wife.

15 And the evidence has been rather substantial
16 that none of these three people worked during that period of
17 time.

18 The third thing which is common to all three
19 years is the Coca-Cola machine. There has been evidence
20 from which you may find that although Manlio allowed the
21 costs of Coca-Cola to be deducted on the cost report every
22 year, he hit the machine for the cash and kept it, pocketed
23 it, for whatever purpose, and that wasn't offset, as it should
24 have been.

25 The other things are for '71 there is the 500

1 jglt 779

2 some odd dollars for the carpeting in Manlio Severino's
3 house and the interest of some \$29,000 on a construction
4 mortgage, which should have been held as capital as part of
5 the investment but was taken in one lump sum.

6 In 1972 there was the penalty charges for late
7 payment on the mortgage which amounted to almost \$4,000,
8 \$3,900, and the automatic garage door Mr. Severino had
9 installed at his house for about \$238.

10 In 1973 the nearly \$7,000 worth of furniture
11 which went to Mr. Severino's condominium in Florida.

12 Now, that is what the evidence has shown has
13 been the extent of the padded expenses, the false expenses
14 and the expenses which should not have been allowed from
15 related companies.

16 Let's go back over the witnesses. The first
17 several witnesses are generally called technical witnesses.
18 Anne Marie Schmidt we hope educated you on the background of
19 the Medicaid and Medicare programs, how each program origi-
20 nated, how it is run.

21 You recall that Medicare pays 100 cents on the
22 dollar and Medicaid, the federal government, pays 50 cents
23 on the dollar.

24 The method of payment is a little bit different
25 in each case. In Medicare, the federal government contracts

1 jglt 780

2 with Travelers Insurance Company, who acts as the agent of
3 the Department of Health, Education and Welfare for proces-
4 sing claims. It also sets the daily rate which nursing home
5 receive based on the figures submitted to it on an annual
6 basis.

7 Medicaid is a little bit different. The figures
8 are submitted to the state. Substantially the same figures
9 from each nursing home are submitted on an annual basis. A
10 daily rate is set and claims are made through the local
11 Departments of Social Services.

12 You recall Mr. Walsh's testimony that the figure
13 are collected from each county each month, they are
14 consolidated on a quarterly basis at Albany and Albany makes
15 a quarterly report to the federal government which in turn
16 pays 50 cents on the dollar for the money expended for
17 Medicaid services in nursing homes.

18 You then heard from Mr. Ryan from Travelers
19 Insurance Company, who explained in some detail about how
20 cost reports are processed. He told you that wages paid to
21 owners, they are not disallowed, but they have to bear some
22 relationship to the amount of work done.

23 If you find that, as the evidence I believe
24 will show, Lawrence Severino, if he came there at all
25 other than visiting as an owner, performed little or no

jglt 781

1 work and that Joan Parisi never showed up at all, and that
2 Annette Severino only came around, then you may find that
3 all the wages shown on the cost reports for all three years
4 were fraudulent, no show employees.
5

6 Mr. Ryan also told you that land rent must
7 relate to business. And you heard testimony from Mr.
8 Antonicchia and Mr. Case that the piece of land, although
9 originally intended by Marlio Severino to support his nursing
10 home, was not needed.
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2 You remember seeing a map which included the
3 land that the nursing home was required to have in
4 accordance with local zoning regulations. It did not
5 include the Antonecchia land. And, as a matter of fact,
6 in an application made in 1970 to the zoning board
7 for an increase in the number of beds, Mr. Severino himself
8 did not claim the Antonecchia land as being necessary.
9 So that's \$8000 a year, and part of that \$8000 for the 1973
10 year which you may find was a false expense which Mr.
11 Severino knew could not be conducted.

12 Mr. Ryan also told you that expenses for
13 furniture and other things that are bought must be
14 related to the nursing home, and it doesn't take a lot of
15 common sense to conclude that things for one's own home,
16 carpet and furniture and things of that nature, cannot be
17 claimed in the cost report.

18 We'll come back to that in a moment. The
19 other thing that Mr. Ryan talked about was the mortgage,
20 construction mortgage interest must be capitalized as part
21 of the investment, and that penalty payments for late
22 payments on the mortgage cannot be shown as an expense.
23 And, as you know, both of those were claimed in 1971 and
24 1972 respectively.

25 And of course the Coca Cola, I think it almost

1 jgr2 782

2 goes without saying, you don't need an expert witness
3 to know that you can't claim the costs and not take out the
4 profit.

5 Mr. Ryan testified to all that and I think he
6 educated you as to what the ground rules were.

7 Mr. Chase from the New York State Department
8 of Health in effect said that same thing. And you recall
9 his testimony was that the New York State rules were about
10 the same, no real difference.

11 We heard from Mr. Walsh, as I said before,
12 who told you about the payment process.

13 These people, Schmidt, Ryan, Chase and Walsh,
14 have just given you the preview. They have given you the
15 background and the base, what the ground rules are, what
16 they found on the various cost reports. Now we get into
17 this particular case.

18 Kenneth Swan goes to Kent Nursing Home
19 in November of 1974 to make an audit, because they are
20 requesting some figures on the 1973 cost report for Sprain
21 Brook Nursing Home. He sees that one of the employees
22 has withholding taxes going to Baltimore, Maryland,
23 and this rings a little bell. Maybe he thinks it is an
24 awfully long commute from Baltimore to Scarsdale every
25 day and he questions that.

2 He meets Percy Karlin on November 13 and
3 happens to ask Percy who owns Limpio Services, which is
4 another suspicious looking item as far as Swan is
5 concerned, and Percy tells him it is owned 10 per cent
6 by Olga Vera and 90 per cent by the Severino grandchildren.

7 Whereupon everyone goes to lunch and after
8 having lunch with Mrs. Nemes and Mr. Severino, or at
9 lunch, Percy says, in answer to Severino's questions,
10 that he told Swan that Limpio was owned 10 per cent by
11 Olga Vera and 90 per cent by the grandchildren.

12 And Severino corrects him and says "No, don't tell him
13 that. Tell him Olga Vera owns 100 per cent of it and
14 the grandchildren just hold it as collateral."

15 And then we have this story about the
16 \$90,000 owed by Mr. Book and the grandchildren are holding
17 his collateral, and that is a rather logical story, an
18 explanation for people holding things as collateral. Only
19 there are too many inconsistencies.

20 For several years after Limpio was formed
21 Karlin files tax returns showing that the children are
22 actually shareholders. As a matter of fact, you've
23 heard testimony that Severino filled in the actual amounts
24 of the shares.

25 You heard Mr. Book's testimony, which proves

1 jgr4 785

2 that when they got through with the deal they walked
3 away and they owed no cash, that all they had was
4 mortgages and leases, and there was not \$90,000 owed.

5 So that's when the Travelers got suspicious,
6 after Swan serving two different versions of the stock
7 ownership of Limpio, and the investigation begins, and
8 the proceeds, and by July of 1975 subpoenas are being
9 served, criminal investigative agencies are in the act
10 and people are being subpoenaed to bring records there,
11 and we'll come to that in a little bit more in a few
12 minutes.

13 You've heard testimony, and I don't think
14 you need to dwell on this too long, from Puccini,
15 Introcaso and Goodman, who testified about installing
16 carpet and garage doors and ordering furniture. You recall
17 that testimony.

18 And you recall the various invoices. Exhibit
19 26 shows Manlio Severino ordered the garage door.
20 Exhibit 27, the check for the garage door in Clara Nemes'
21 handwriting signed by Lawrence Severino. Exhibit 27A
22 is the check stub in Clara Nemes' handwriting.

23 And then we have the pages out of the books,
24 the books of account, which are all in Clara Nemes'
25 handwriting, which you can examine if you wish, the

1 jqr5 786

2 notation that first garage door crossed out with repair,
3 and of course Percy Karlin was questioned quite closely on
4 cross-examination as to whether or not Sprain Brook had
5 a garage door. I submit you may find that Clara Nemes
6 knew just as well as Percy Karlin that Sorain Brook had
7 no garage door.

8 Now, what the evidence will show from this
9 point on I'm not going to suggest to you that you can
10 find that Clara Nemes knew that you couldn't take \$29,000
11 in construction mortgage interest, and you had to
12 capitalize it.

13 I am not going to suggest that Clara Nemes
14 knew about what pieces of land the home had to have.

15 The only reason we are touching on a lot of
16 this stuff is to give you the complete picture. We
17 only have to prove to you that Clara Nemes knew about
18 some of these things, not all of them. A conspirator
19 does not have to know about everything that every other
20 conspirator is going. There are several conspirators
21 in this case: Annette Severino, Joan Parisi,
22 Lawrence Severino, Percy Karlin. There has been a lot
23 of cross-examination.

24 Half the cross-examination has been devoted
25 to proving Percy Karlin's a scoundrel and a crook, and

1 jgr6 7 87

2 we don't contest that because Percy Karlin was right up
3 to his ears in this case, and you've heard clearly from
4 the witness stand the deal he got to save his neck,
5 and you can assess his credibility.

6 If a person were to get up on a witness stand
7 and to fabricate a story in order to save his own neck,
8 certainly he would have done a better job than Percy Karlin
9 did in the two days he was on the stand. At least
10 he would have answered the government's direct questions.

11 So there are a lot of activities going on
12 between a lot of different co-conspirators that other
13 co-conspirators don't know about.

14 I think what you may find from the
15 evidence, although there is no direct evidence that
16 Clara Nemes may or may not know about the Coke machine.
17 Marjorie Murphy testified that machines were emptied
18 out once a week. That is not important whether she
19 knew about it or not.

20 The thing that Clara Nemes, you may find
21 that she knew about it -- the two things she knew about
22 and participated in, which make her a part of their
23 conspiracy is, one, the no-show employees on the payroll.

24 Marjorie Murphy testified that either
25 Clara Nemes or Manlio Severino instructed her to put

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788

2 Lawrence, Joan and Annette on the payroll, and every week
3 the payroll is handled by Clara Nemes. Checks are picked
4 up, they are distributed, the checks for the children are
5 given -- the Lawrence and Joan and Annette are given either
6 to Mrs. Nemes or to Mr. Severino, and Mrs. Nemes, working at
7 the home since 1971, has as much knowledge as all these
8 other people, as the nurses testified, as to whether any
9 of the Severino children or the Severino wives worked
10 at the home.

11 That's some evidence.

12 What I submit to you is really the strongest
13 evidence is Limpio Services. And the evidence shows
14 that Limpio Services for the first couple of years
15 was nothing more than a figment of Manlio Severino's
16 imagination and then when it came into reality in 1973
17 it was a corporation then but it was a corporation
18 utterly controlled by Manlio Severino and Clara Nemes.

19 Now let's stop for a minute and ask yourselves
20 why does Limpio Service come into existence in 1973?
21 Manlio had a good thing going. He would fabricate
22 out of thin air a figure every year when he and Percy
23 sat across that table and made that cost report.

24 Something is different as 1972 is drawing
25 to a close because Manlio is going to sell the nursing home,

1 jgr8 789

2 and you may find from the evidence you've heard that he
3 perhaps said to himself "This is a chance for me to make
4 some extra money. We'll have a contract and the new
5 owners of the nursing home will pay the contract and
6 that money will go into Limpio Services, which is
7 controlled by me, and that will be a little extra money
8 that will be coming in, quite a bit of extra money, 20,
9 30, 40,000 dollars a year."

10 So, in order to do this, you've got to have
11 a corporation. Remember the chronology. On December
12 7, 1972 the sales agreement is signed. On December 6 --
13 well, let me take that back.

14 There suddenly appears, somewhere between
15 the time the sales agreement is signed and the closing,
16 according to Mr. Book's testimony, a contract dated
17 December 6, 1972, one day before the Sprain Brook sales
18 agreement was signed, and that is a contract for three
19 years with Limpio Services, 108 Jefferson Street, and
20 that was the contract that Miss Nobregas thought she saw
21 and was quite surprised because that was where she
22 was living during that period of time.

23 Remember, she lived at that address, I believe,
24 until December 1973 and did not see that paper for the
25 first time until after she moved from that place, when she

1 jgr9 790

2 translated it for her mother.

3 So you may find that either December '73
4 or later she saw that piece of paper for the first time.

5 What else appears? And interesting
6 piece of paper, a certificate of incorporation which is
7 filed up in Albany, Government's Exhibit 97, and that is
8 a certificate which is executed the 23rd day of February
9 1972. That's about nine months before the contract
10 with Book, and it is signed "Olga Vera," and then at
11 the bottom there is typed in the notary public's place
12 where he signs, and it is typed in "On this 23rd day of
13 February 1972, before me personally came Olga Vera."

14 But Frank Barbarita, the notary public,
15 knowing that a notary public can't backdate something,
16 and we all know what happens when a notary public back-
17 dates documents, they get in trouble, don't they, he writes
18 the correct date in, what you may find is the correct
19 date, which is the 26th day of December 1972.

20 And then, and more persuasive, the Department
21 of State receives the "filed January 3, 1973."

22 So a month after the contract is signed,
23 Limbio Services, Inc., breathes its first breath of life.
24 Who opens the bank account? Manlio Severino. Who
25 in 1974, after a year of paying by cash, once Limbio--

1 jgr10 791

2 the home had changed hands and there is no longer any
3 reason to pay cash, who opened up the automatic payroll
4 Clara Nemes.

5 Now, we have got a corporation, and who are
6 the employees? According to the people who worked in the
7 office, Marjorie Murphy and I believe Mrs. McNamara,
8 all of a sudden the housekeeping staff of Sprain Brook
9 became the housekeeping or the employees of Limpio
10 Services, and they were dropped from the Sprain Brook
11 payroll and picked up on a cash payroll of Limpio
12 Services.

13 Percy Karlin testified that Manlio Severino
14 told him he was taking out a couple of hundred bucks a
15 week and he wanted to know how he could cover it and
16 Percy advised him, I guess as a crooked accountant would
17 advise his client, "Pad your payroll with fictitious
18 employees."

19 Remember his testimony? "Pick a social
20 security number. Make sure you get the proper number
21 of digits, switch them around every once in a while, and
22 that will account for the extra money." He did, and
23 you heard Mr. Pogge testify this morning there were
24 eight people during that year where the social security
25 numbers didn't match the names. And we had all kinds of

1 jgr792

2 names, and one person was 12 years old and one person was
3 in their seventies. You may find that these are the
4 fictitious employees. Manlio just picked numbers out
5 of the air, and of course if you pick a number, it has
6 to belong to someone, and it did.

7 So there is your eight fictitious employees.

8 You've heard the testimony of both Rosemary
9 McNamara and Marjorie Murphy that they went to the bank,
10 and I think the evidence shows from the number of checks
11 they identified that of the total year they went at the
12 bank maybe 30 times more or less, and each time they
13 went to the bank they picked up cash for the payroll plus
14 a couple of \$100 bills.

1 jgr793

2 Marjorie Murphy recalls a couple of \$100
3 bills and occasionally a 50 and Mrs. McNamara recalls
4 two \$100 bills, two crisp big ones. And where did
5 this money go every week? To Clara Nemes?

6 And there is no evidence of what Clara
7 Nemes did with it, but you may find, based on Percy
8 Karlin's conversation with Manlio Severino, that Clara
9 Nemes gave it to Manlio Severino.

10 So there is the payroll which is being
11 padded. Clara Nemes is making out the checks. If you
12 examine the checks, the Limpio cash payroll checks,
13 and if you recall the testimony, all the checks were
14 written out either by Manlio Severino or Clara Nemes.
15 Some are signed, I believe, by Percy Karlin, some are
16 signed by Olga Vera. And all these checks were cash
17 and cash in denominations was obtained.

18 Now, one other thing that happened after
19 this Limpio Services was formed. The contract on the 7th
20 of December with Book and the appearance later on of a
21 contract with Limpio dated December 6 and the certificate
22 of incorporation backdated almost a year, which is filed
23 January 3, 1973.

24 What was the other thing that happened?
25 You have to have a bank account. So a bank account was

1 jgr794

2 opened in December of 1972 by Salvatore Severino at the
3 Hudson Valley National Bank. And Exhibits 82 and 82A,
4 you will recall the stipulation that I read this morning,
5 was that Salvatore Severino, all the names Salvatore
6 Severino, were actually made by Manlio Severino.

7 Incidentally, Manlio Severino in that
8 Stipulation, if you compare all the exhibit numbers,
9 admits to signing all the Manlio Severino Signatures
10 anywhere in the evidence. In addition, he admits to
11 making the Salvatore Severino signatures on these signature
12 cards.

13 ~~Mr. Caputo testified this morning that the Olga~~
14 ~~Vera signatures were forgeries.~~

15 ~~So now we have a bank account which is opened~~
16 ~~up with a \$5000 check, and it has been stipulated that~~
17 ~~the Lympio, L-y-m-p-i-o, they didn't even know how to~~
18 ~~spell the name right in 1972, was in Clara Nemes' hands~~
19 ~~writing signed by Manlio Severino.~~

20 On the back the check is endorsed for deposit
21 to Limpio Services by Salvatore Severino.

22 ~~So Clara makes out a check signed by Manlio,~~
23 ~~who takes it down and signs "Salvatore" on the back and~~
24 ~~starts a bank account for Limpio Services. And Exhibit~~
25 84 is the deposit slip, where it is deposited on December

1 jgr795

2 14, 1972.

3 So now Limpio has a bank account. What
4 happens next?

5 If you look at the statements of this bank
6 account, after the first month nothing happened. The
7 bank account was nothing but a sham. You can look
8 through these statements and all you have is a monthly
9 service charge every month and the balance is going down,
10 it is down, as of February '76 to \$101.

11 What happened with that bank account? One
12 of the things that happened is that shortly after the money
13 was deposited, as shown by Exhibit 85, it looks like
14 on December 18, 1972 a check is made out to Thomaston,
15 Spruce Company for \$4500, and it is endorsed on the back
16 by Thomaston, Spruce and it is signed by Salvatore
17 Severino.

18 You know now that Thomaston, Spruce is
19 Manlio Severino's company. So Manlio Severino posing
20 as Salvatore Severino took \$4500 of the money out of
21 Limpio Services that he just put in, and he put it in
22 another one of his companies.

23 What happened to that \$4500? Well, we
24 have a check dated December 21st from Thomaston, Spruce
25 to Kent Nursing Home signed by Manlio Severino of \$4000.

1 jqr796

2 So what Mr. Severino did, with Mrs. Nemes' help, he
3 took \$5000 from Sprain, deposited it to the bank account
4 of Limpio in the name of Salvatore Severino, took \$4500
5 of that out and put it in another one of his bank
6 accounts, Thomaston Spruce, and then took 4000 of that out
7 and put it in to his other nursing home.

8 So that's what is called laundering money.
9 It is going through bank account to bank account to bank
10 account. So far Manlio Severino has \$500 left that is
11 not in either of the nursing homes or his own
12 corporation.

13 The remaining activity in the bank account
14 shows a \$400 check going to Kentnur Development,
15 which you recall is another one of the Severino holdings,
16 a \$61 certified check to the Department of State for
17 forming the corporation, and another \$100 for deposit.
18 So the total is \$5100. And about 4900, almost \$5000
19 of that, has gone out almost immediately. The rest of
20 the money is left there and the bank account is dormant
21 forever. That is how the first Limpio bank account
22 started out, with Clara Nemes' help.

23 Now, the next thing that happens is that
24 during the summer of 1973 another check is written out
25 by Mr. Severino, or at least it is prepared by

1 jqr797

2 Mr. Severino, and this is check, exhibit in evidence 101,
3 which seems to have disappeared in this pile of papers.

4 You will recall that check 101 was a check
5 that Mr. Caputo testified about this morning. That was
6 the check that was stipulated, that was made out to
7 Kentnur Development for, I think, \$1500 or \$2000 and it was
8 written to Kentnur Development in Manlio Severino's hand-
9 writing, was endorsed on the back in Manlio Severino's
10 handwriting "Kentnur Development" out of Limpio, with
11 the signature Olga Vera, the signature Mr. Caputo
12 testified was a forgery, not a forgery by the same person,
13 though, who forged the two signature cards.

14 ~~You may find that since Salvatore Severino~~
15 ~~was Manlio Severino and he opened the bank account,~~
16 ~~you may find that Manlio Severino forged that signature,~~
17 ~~for the first Limpio bank account.~~

18 Mr. Caputo was unable to say who forged
19 the other signature. Olga -- Clara Nemes, it has been
20 demonstrated by the defense in cross-examination, did not
21 have the authority to sign the Limpio bank account. ~~It~~
22 ~~would not be unreasonable to draw the conclusion that~~
23 ~~either Clara Nemes or Manlio Severino made the Olga Vera~~
24 ~~signature on the Kentnur check.~~

25 Now, you recall the testimony of Mr. Karlin.

1 jgr798

2 Who has custody of the checkbook? Who write out the
3 checks? ~~All the writing on the payroll checks, which had~~
4 ~~been identified by Marjorie Murphy and Rosemary McNamara,~~
5 ~~is either Severino's or Nemes' writing. You may find~~
6 ~~from that that Severino and Nemes had access to the~~
7 Limpio checkbook. It wasn't Percy Karlin. Karlin is
8 a traveling accountant that pops in once a week. So
9 the Kentnur check was forged and ~~you are free to decide that~~
10 ~~it was forged either by Mrs. Nemes or Mr. Severino.~~

11 Now, time wears on a little bit. The nursing
12 home has changed hands and all of a sudden there is
13 money coming into Limpio, because unlike 1973 when, as
14 Mr. Karlin testified, there is just enough money going
15 into the Limpio bank account for Sprain to pay the
16 payroll, now Book is playing the game by the rules. He has
17 a contract. He doesn't know what is going on. He is
18 paying the \$6000 or \$7000 a month on this contract for
19 \$85,000 a year and Percy Karlin, if you recall, tells
20 Severino "We got to do something. We got too much money
21 coming into Limpio. We got to pay tax on it."

22 Remember, Limpio was a cash reporting
23 organization which must pay tax on the money it gets
24 when it gets it.
25

1 jqr799

2 You will also recall the little shenanigans
3 where you would accrue money and you could take it over
4 if you were on an accrual basis and you could take it as
5 an expense but if you didn't get it the one getting the
6 money didn't have to pay tax on it.

7 So all of a sudden it becomes clear that
8 you have a lot of money building up in Limpio and ~~Manlio~~
9 ~~wants to get it out.~~ He says how do I do it? And
10 Percy says you need some expenses and you got to get more
11 expenses for Limpio. So Manlio says "I'll think about it."
12 He comes back and says "I got a company called Tarnetto
13 Cleaners." I think cleaning companies is an apt name
14 for the type of operation, what was happening with the
15 money going through, and there is a conversation.

16 What does it do? And Manlio hesitates
17 and says, "Well, it washes windows, that's it, washes
18 windows."

19 You can gather from that conversation that
20 it wasn't something that Manlio knew ahead of time. He
21 was winging it as he goes along. "It washes windows."

22 So now we have checks being made out
23 to Tarnetto Cleaners and, these checks are in evidence
24 as Exhibit 80A, and these checks are all made out --
25 Limpio Services check. And as with all the other Limpio

1 jgr800

2 Services checks in this case, either in Manlio Severino's
3 writing, with that very distinctive E -- do you recall
4 that distinctive E with a little hook in the middle?
5 Look at some of these exhibits and pick up that E -- or
6 Clara Nemes' distinctive writing, as Mr. Caputo put it,
7 with an accent, which I suppose means that a different
8 style of writing. And it is a very distinctive style of
9 writing.

10 And ~~all the writing you see here it has been~~
11 ~~stipulated is Clara Nemes' writing.~~ Percy Karlin
12 identified her writing as being all through the books.

13 So we have a total of about \$10,000 or
14 \$12,000 between July 1, 1974 and December 16, 1975 that
15 were going into Tarpetto.

16 Now Tarpetto has to have a bank account,
17 right? So it does. ~~A bank account is started. July~~
18 ~~2, 1974 a corporate resolution is submitted to the~~
19 ~~Bankers Trust, up in Katonah, which happens to be where~~
20 ~~Clara Nemes lives, and it is written out and filled out~~
21 ~~and signed by Manlio Severino, showing Clara Nemes as~~
22 ~~being the president and treasurer and Manlio Severino~~
23 ~~being the secretary, and it has been stipulated this is~~
24 ~~his writing.~~

25 And we have a signature card which shows the

1 jgr801

2 date that the account was opened, July 16, it shows Clara
3 B. Nemes as being the signatory on the account.

4 This is fine. So there is a bank account
5 opened, the money is going out of Limpio, Clara and Manlio
6 are writing Limpio checks, putting the money into
7 Tarpetto.

8 Where does the money go from there? You
9 can examine the checks that were admitted into evidence
10 this morning. These are all Tarpetto checks, and the
11 money went to pay Mrs. Nemes' rent, \$575 a month, it was
12 raised -- well, it ranges from 565 to 585; it went
13 to Thomson & McKinnon, her stockbroker, about \$8000 worth.
14 Later on we have checks from Limpio Services.. We will
15 talk about those in a minute.

16 We have several thousand dollars worth of
17 money going out to cash or to Clara B. Nemes. And we
18 have checks for personal expenses.

19 So Tarpetto, if you examine these checks,
20 was the personal checking account of Clara Nemes. She
21 paid her rent, invested in stocks, she bought things and
22 she used the money.
23
24
25

1t Take 2B p.m.

jglt 1

2 Everything is fine except in the meantime Ken
3 Swan is going back and he is suspicious, the Travelers
4 starts investigating, and the first thing you know there is
5 an investigation and records are subpoenaed, and it has been
6 stipulated that prior to July 1975 the Limpio records are
7 subpoenaed, and in July '75 the stipulation was that Sprain
8 Brook was subpoenaed the latter part of July 1975 and
9 records -- their corporate records are turned over. People
10 started appearing before the grand jury.

11 What happens? Well, some strange things happen.
12 All of a sudden there is a change in the Tarpetto checking
13 account. Now we have a new banking resolution, a new corpor
14 resolution, in Clara Nemes' writing, showing Olga Vera as
15 being the president and Clara Nemes being the secretary.
16 And this is dated July 16, 1974 and it is signed by Clara
17 Nemes, and we have a signature card also signed by Clara
18 Nemes showing that the signatories are Olga Vera and Clara
19 Nemes.

20 But there is only one thing wrong with this. Yo
21 heard testimony from Mr. Conn of Bankers Trust that this
22 resolution was not filed and the change made in the bank
23 until August 11, 1975, after the subpoenas were served on
24 Sprain Brook and Limpio. You may find from that that Clara
25 Nemes and Manlio Severino decided they better get a story

1 jglt 2

2 together and make this Tarpetto Cleaners into something that
3 wasn't. Instead of being Clara Nemes' personal checking
4 account, it became a joint business between her and Olga
5 Vera.

6 Going back to Percy Karlin, you remember his.
7 testimony. Percy Karlin testifies that just after subpoenas
8 were issued, Clara Nemes comes to him and says, "You made
9 a mistake on the way you handled those Tarpetto functions.
10 They weren't really expenses. They were loans. And Olga
11 Vera and I have this company and Olga Vera and Limpio
12 Services lent me the money and I needed it for various things
13 and when I sell my jewels that I smuggled from Hungary, I
14 will pay back the loans."

15 And, sure enough, all of a sudden after the
16 investigation is begun, money starts going back into Limpio,
17 and we have a deposit on September 16, 1975 of \$9,300 into
18 Tarpetto Cleaners' bank account.

19 And we look behind that deposit and we find, by
20 going to the back reocrds, that the same day -- or that
21 deposit, the thing that was deposited was a check drawn on
22 Clara Nemes' personal account for \$9,300, September 16,
23 1975.

24 Going back to Clara Nemes' personal bank account
25 we find that just prior to that time there is a deposit in

1 jglt 3

2 her bank account of \$10,095, which is made up of her paycheck .
3 which comes to \$220.88, and four checks from the Kent
4 Nursing Home, for 575, 8,000 -- I'm sorry, 800; 6,000;
5 and 2,500. And all of them are signed by, guess who, Manlio
6 Severino.

7 Well, that is a complete organization of
8 laundering money. The balloon is in the air, people are
9 investigating, we have got to pay this money back to Limpio.
10 So Manlio gives Clara about \$10,000 in checks, Clara puts
11 it in her personal account, writes out a check on her
12 personal account into Tarpetto, puts the money into Tarpetto,
13 and then starts writing out checks to pay back Limpio.
14 This is why the name Tarpetto Cleaners is an apt name for
15 an operation which launders money in the manner in which this
16 money was laundered.

17 Now, the ~~Tarpetto bank account is not offered to~~
18 ~~show that the money that went to Tarpetto was unjustly~~
19 ~~claimed as an expense on the 1971, '72 or '73 cost reports~~
20 ~~to the federal or state governments. The money that goes~~
21 ~~to Tarpetto in this whole complex set of washing money back~~
22 ~~and forth through different bank accounts shows one thing,~~
23 ~~that Limpio Services was controlled very, very closely by~~
24 ~~Manlio Severino and Clara Names.~~

25 Now, Limpio Services, the money for three years

1 jglt 4

2 in a row that was claimed for Limpio Services, going in the
3 cost report, and in 1973, close to \$40,000 went on the cost
4 report for alleged profit under the contract with Limpio
5 Services.

6 You will recall the regulations said, as
7 testified to by Mr. Ryan, that in a related company doing
8 business with a nursing home, that is, if there is common
9 ownership or control, you can only take the actual cost of
10 the contract.

11 I think that is a very, very logical, sensible
12 thing, because if it wasn't for that, a person owning a
13 nursing home could create a half-dozen little companies, come
14 up with important contracts and do business with his own
15 nursing home and take all the profit he makes from these
16 different contracts, put it on his cost report and jack his
17 costs way up and make a lot of money.

18 So very wisely the regulations were designed to
19 say that, "Okay, you can do business with related companies
20 until accounts come home, but you are going to have to drop
21 the profit. If you want to make profit yourself and you
22 want to finagle back and forth, that's fine. But when you
23 put the cost report in, you cannot claim the profit."

24 And what Manlio Severino and Percy Karlin were
25 doing here is claiming profit. So a very important part of

1 jglt 5

2 the scheme was to keep from government knowledge the fact.
3 that Limpio was nothing more than a sham, a make believe
4 company. Then when it became a company it was controlled
5 very closely by Manlio Severino and Clara Nemes.

6 Now, I would suppose that Clara Nemes being
7 a bookkeeper, being an employee as on cross examination
8 counsel would have you believe, you may say, "Well, what has
9 she got to get out of this? She is a mere bookkeeper. Why
10 should she get involved in this scheme with people who are
11 making a lot of money?"

12 I suggest that you can find something else
13 from the Tarpetto episode:

14 That Clara Nemes was in this for a lot more
15 than \$220 a week for bookkeeping. The relationship between
16 Manlio Severino and Clara Nemes was not just that of an
17 employer and bookkeeper but it was more co-conspirators.

18 Clara Nemes is much more talented than just
19 being a bookkeeper.

20 You may have noticed how expertly she tore into
21 those work paper folders when Percy Karlin was on the stand.
22 That is not consistent with her position, as counsel would
23 have you believe, that she is just a mere, poor, dumb,
24 ignorant bookkeeper that just takes orders.

25 Now that was Clara Nemes' payoff. If you look.

1 jglt 6

2 at this bank account, you will see close to \$16,000 that
3 went in that Tarpatto account and that Tarpatto Cleaners
4 was nothing more than Clara Nemes' second personal checking
5 account, and it was only after the balloon went up, only
6 after the investigation began, only after subpoenas were
7 issued and it became obvious to all of them that they were
8 going to get in trouble that they started putting the money
9 back into Limpio.

10 It is not inconsistent with the story they told
11 Percy Karlin before it was known that he was cooperating,
12 because they told him this story a year before, almost a
13 year before he started to cooperate, and the story then was
14 that these were just loans until I can sell my jewelry.

15 Well, there is no evidence of any jewelry
16 being sold, at least from these documents. And I would
17 suggest that if any jewels were being sold, they were sold
18 to Kent Nursing Home and Manlio Severino.

19 Now, there are few other things which demonstrate
20 Clara Nemes' participation in this scheme that makes her
21 more than just a bookkeeper who is taking orders, a loyal
22 employee.

23 The testimony has been that she kept Limpio's
24 books. You heard Haydee Nobergas' testimony that Olga Vera,
25

1 jglt 8

2 her mother, has a fourth grade education, who has emigrated
3 here from Cuba, who worked hard all her life as a cleaning
4 woman, who cannot read or write English.

5 I ask you to look at some of these letters.
6 Some of the letters, the three and four page letters, written
7 by Limpio Services to Henry Book, going into very intricate
8 discussions about percentages of salary increases and
9 something like that, they are signed by Olga Vera. You have
10 a right to take the exhibits into the jury room. Ask for
11 those exhibits and ask yourself, does a woman with a fourth
12 grade education, who can not read or write English, who has
13 to get her daughter to translate a piece of paper for her,
14 can she write letters like that?

15 You recall also Mrs. Nobergas' testimony that
16 the first time, one of the times that her mother is
17 called before the grand jury, she is called before the
18 grand jury four times -- imagine what that woman went
19 through, barely being able to speak English, cannot read
20 or write, doesn't know what the heck is going on, and they
21 are putting her in the grand jury and asking questions about
22 Tarpetto Cleaners.

23 What Tarpetto? She goes back and says "~~What~~
24 ~~is Tarpetto?~~"

25 "Call Clara Names?"

1 jglt 9

2 She says , "Come to my house."

3 And they go to her house and she says, "Olga,
4 don't you remember this, and Olga, don't you recall that?
5 Don't you remember that?"

6 A woman who has a poor memory, as testified to
7 by her daughter. And all of a sudden she is brainwashed and
8 goes back and spews this forth to the grand jury:

9 "Oh, yes, it is my company and Clara Nemes and
10 I are going to go out and make money and this and that and
11 the other things," and the answers are supplied by Mrs.
12 Nemes.

13 Mrs. Nemes testified before the grand jury in
14 the latter part of February through Olga Vera, told her the
15 story.

16 Now, there is not -- these are not the actions
17 of a person not involved in covering up a conspiracy. And
18 don't forget, all the time that this is going on, the govern-
19 ment is auditing these forms and they are asking questions.
20 Swan is coming around, auditors are coming around. The
21 conspiracy charges as one of the objects, in addition to just
22 generally defrauding the government, hindering the HEW
23 program, making false statements in matters within the
24 jurisdiction of the United States government, and you may
25 find that any one of these several representations made,

jglt 10

either before or during these cost reports being filed, in an effort to keep this thing under wraps, to keep from being found out and having a lot of this money disallowed at the very least, these are all false statements in a matter within the jurisdiction of the United States.

One last thing, and I am running out of time.

We have put into evidence the pages from the books and records of the various years covering the garage door, the carpet and the furniture, and there has been disclosure by the government on direct examination of certain entries made in the books.

"M.S.S., question mark, brackets," and I want you to examine those in the jury room, I want you to look and ask yourself why would the bookkeeper, when something has been paid for by the boss and a bill comes in, wait until the accountant comes once a week to ask how to treat it when the boss who wrote the check, or one of the bosses who wrote the check, why would Clara Nemes go to Mr. Percy Karlin to find out how to treat the furniture going to her boss' condominium in Florida? Why would Clara Nemes write down "Garage door," and cross it out and put "repairs"? Why would Clara Nemes make a permanent entry in ink in the book if she had a question which required a little footnote in pencil?

jglt 11

1
2 You may find that because of the lapse of time
3 between the beginning of the investigation and, the time
4 the subpoenas were served and the time the records were
5 turned over, as testified to by Mr. Karlin, that certain
6 ~~notations were made in order to cover the trial.~~

7 You have heard the term used in the trial
8 "Vague audit trail." I suggest you may find from this
9 evidence that Mrs. Nemes and Mr. Severino got together and
10 they tried to make that trail vague so that if it ever came
11 up before a jury they could point out "M.S.S., question
12 mark". Percy Karlin didn't do his job.

13 The accountant's job is to come in the books,
14 to check the journal and collect the ledgers to make
15 sure everything is in proper order. Therefore, if you write
16 something on a bill and if you write something on a check
17 stub, as with, I believe, the Yonkers Carpter matter, there
18 is no way the accountant would see it.

19 Mr. Karlin denies ever seeing any of these
20 entries. Likewise in a defense exhibit, a number of which
21 escapes me, you remember the work sheet with a little
22 asterisk on it with a footnote in the back, M.S.S. or
23 "Charge to M.S.S."? All these records were held for a
24 while, and you recall also that the conversation that Percy
25 Karlin had with Clara Nemes when the state auditors were at

1 jglt 12

2 the nursing home, where he asked her "Is everything out of
3 the records that should be out?"

4 She said "I hope so," or "I think so."

5 You may find from this, these are little pieces
6 you may put together, and you are entitled to find from this,
7 using your common sense, that there is a little running
8 around to try to cover as many of these transactions as
9 possible.

10 About the same time they went and they started
11 that new bank account.

12 Now, there is evidence from which you may find
13 beyond a reasonable doubt that Clara Nemes, although she
14 wasn't a ringleader, she didn't make \$100,000, she almost
15 made \$16,000, but still, nevertheless, is a member of this
16 conspiracy along with Percy Karlin and Manlio Severino and the
17 rest. And based on this evidence we ask you to bring back
18 a verdict of guilty against Clara Nemes for this one count
19 of conspiracy.

20 THE COURT: Madam Foreman and ladies and gentlemen
21 of the jury, I think it may be helpful to us if we took a
22 few minutes break now. You may retire to the jury room. We
23 will have a few minutes rest and then we will come back.

24 (Recess.)

25
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GOVERNMENT'S REBUTTAL

jglt 862

I thank you very much for having listened to me and I only ask you to do what is right .

MR. WILSON: If it please the Court, ladies and gentlemen of the jury, as Mr. Russo last pointed out, the government gets a chance to respond because the government has the burden, as has been pointed out several times, of proving each and every element beyond a reasonable doubt, and that's why we get the chance to argue twice.

I am going to make this short. I have got really a little checklist of things which should really be ventilated before you go back to the jury room.

I have no doubt, my personal opinion matters to me and this is something I want to point out. The personal opinion of lawyers in a case, their outrage or lack of outrage, has no value whatsoever, nor do harangues nor do intimidations or anything else. We picked the jury three weeks ago, we took people off, we left people on, and I stood up and said "I accept the jury, I accept the jury and I accept the fact that people chosen for the jury can play the game by the rules."

I am not going to spend fifteen minutes reminding you of your obligations as human beings and citizens.

Mr. Russo apparently has construed too narrowly the object of a conspiracy charged in this indictment.

1 jglt 863

2 Conspiracy charges three things:

3 First, to defraud the government; second,
4 to violate certain laws, the laws being the laws against
5 making false claims and the laws against making false state-
6 ments. A false statement can be a document or an oral state-
7 ment in any matter within the jurisdiction of the United
8 States government.

9 In this case, if you say something to a person
10 from Travelers or New York State, you make a representation
11 either directly or indirectly, you are making a false state-
12 ment.

13 The indictment language says to defraud the
14 United States in its lawful right to have HEW administer
15 the provisions of the Medicare and Medicaid acts fairly and
16 impartially, without undue influence, unlawful inducement,
17 false representations, favor or fraud.

18 Now, that is broad. That is the whole bowl of
19 fish. It does not mean that we have to hang one of these cost
20 reports around somebody's neck in order for them to be guilty
21 of conspiracy. It means if you have a part in it, if you are
22 part of an ongoing scheme before, during and after, then you
23 are part of a scheme to defraud the government.

24 Now, what appears to be the big thrust of
25 counsel's argument is that there is only one witness instead

jglt 864

of 22 or 23, I've lost count, I guess it might have been 24 witnesses for the government. And the Judge will instruct you that it is not the number of witnesses that makes a great deal of difference either.

But what Mr. Russo suggests, what he seems to be saying is that Percy Karlin is a scoundrel, he is a crook, he is a person you wouldn't have doing your tax returns, therefore you must disbelieve him and acquit Mrs. Nemes. And forget about all the other witnesses.

He asks you or suggests to you that Marjorie Murphy, the young lady that started crying under cross examination last week, maybe is the real source of the fictitious employees, or maybe Rosemary McNamara.

~~He also suggests to you that while disbelieving everything that Percy Karlin said to you in the three days he testified, you should believe the story that Clara Nemes told him, because that is the truth, the story about needing money and her and Olga Vera having this company to get more business and she is going to hock her jewels that she smuggled out of Hungary and pay back Limpio.~~

~~I don't recall anything being said either in evidence or in argument about it being against the law to smuggle jewels out of Hungary.~~ I don't know what Hungary has to do with this case. I don't know what the jewels have

1 jglt 865

2 do with this case. The only thing that I suggest to you
3 that you can find from the evidence is that if Clara Nemes
4 need ever had any jewels to sell, she sold them to the Kent
5 Nursing Home and Manlio Severino for about \$10,000.

6 As I say, the thrust of the defense appears to
7 be that Percy Karlin was a scoundrel unworthy of belief. Mr.
8 Russo is wrong when he suggests that Percy Karlin will lose
9 his license if he is convicted. That is not true. And the
10 Judge, I'm sure if Mr. Russo disagrees with my recollection
11 of the law, will settle the matter. It is not automatic in
12 this state, lawyers, courts or anyone else.

13 Percy Karlin is a human being, he is a pragmatist
14 and he knows he has done a lot of bad things, he is in
15 trouble, and you may not want him for your next door neighbor,
16 you may not want to put him up as the Jaycee man of the year,
17 but nevertheless, Percy Karlin is nothing more than a human
18 being, an accountant; he has been an accountant for about 37
19 years. He is a little bit shady. I don't know. Maybe that
20 is the kind of person you would like to have doing your tax
21 returns. He knows all the tricks, and I suggest, I agree
22 with Mr. Russo, that Percy Karlin is a rather disreputable
23 accountant, because that is the kind of guy Manny Severino
24 hired to do the books for seven, eight, nine years before he
25 was fired, after cooperating with the state.

1 jglt 866

2 So we don't dispute Mr. Russo that Percy Karlin
3 is a scoundrel and a knave and he was in the right company.
4 What we do dispute is the fact that Clara Nemes was a mere
5 employee, like Marjorie Murphy or Rosemary McNamara, that just
6 worked in the office and took orders and took commands from
7 Percy, who came once a week. The evidence does not show that.

8 The testimony shows that she was, I forget the
9 word Percy used, a lead accountant, or something like that,
10 a person who was in the status of an accountant. And if you
11 look through these books, if you look through these papers,
12 you will find that her writing is all over them. She was more
13 than just a mere bookkeeper.

14 Percy, and this is a wonderful job of bootstrapping
15 is a straw man. ~~When Manlio Severino set up Limpio~~ you recall
16 he told Percy, "I am going to have this company called
17 Limpio and we are going to have cleaning contracts, we can get
18 this profit in here. I am going to put Olga Vera in charge
19 of it and give her 10 percent in return for her help and I
20 will give the rest to my grandchildren, 90 percent."

21 That was the original plan until Travelers
22 started snooping around. Then the plan changed to being a
23 collateral thing, with \$90,000. ~~Then we started getting~~
24 ~~involved with all these machinations.~~

25 But the original plan was "We are going to set up

1 jglt 867

2 this little company, we are not going to tell anybody that
3 I control it, and I want to tell you what the definition of
4 "control" is from 5C in evidence.

5 It is defined as any kind of control, whether or
6 not it is legally enforceable, how ever it is exercisable
7 or exercised. It is the reality. Control which is decisive
8 and not its form or mode of its exercise.

9 Unlike, as suggested by Mr. Russo -- I don't
10 recall I said this in opening, but apparently he did. I never
11 said I was going to show you that Clara Names and Percy
12 Karlin and Manlio Severino sat around the table and concocted
13 a scheme. As a matter of fact, I recall my opening state-
14 ment. I said conspiracies don't work like that. People do
15 not sit down and have a contract and notarize it and say,
16 "I hereby declare myself to be a co-conspirator." It just
17 doesn't work that way.

18 A bunch of people get together. It kind of
19 evolves. A meeting of the minds, a meeting. Eyes across
20 the room, as it were, and everybody knows without a word
21 being spoken, what is going down, and that's what happened
22 here, and you can find that from the evidence.

23 If you are looking for a meeting, a formal
24 gathering of the minds, forget it, you are not going to find
25 it.

1 jglt 868

2 So Percy is really set up in this defense as a
3 straw man. He is the guy who did all the bad things. He
4 controlled the accounting. Manlio Severino didn't know
5 anything about accounting. Percy did everything.

6 You recall his testimony. He only handled the
7 financial parts. Cost reports. Manlio Severino handled
8 everything else.

9 ~~Manlio Severino was the brains behind the~~
10 operation,

11 The certifications? A good part of Mr. Russo's
12 argument was spent on certifications. That doesn't mean
13 anything. Mr. Karlin is certifying that the figures that
14 he's got in those cost reports are the figures he got out of
15 the books, and he did some kind of checking on them.

16 All right, so you may find that he made a false
17 certification. If you find that, so what? As I say, I am
18 not offering Percy Karlin as being an honest man. He is a
19 co-conspirator, just as much a crook as the rest of them are.

20 Now, let's look at the \$200 a week bookkeeper
21 that Mr. Russo suggests that the government, with all its
22 power and majesty, is picking on.

23 And parenthetically I want to state that sympathy
24 has no part in your duties. It is not a pleasant duty
25 sometimes being a juror, nor is it a pleasant duty being a

1 jglt 869

2 prosecutor. But you must decide. You must be guided by
3 the evidence and not by ringing tones of persecution and
4 things that happened yesteryear and Watergate and all the
5 other little things that Mr. Russo has very skillfully
6 managed to slip into his argument.

7 Decide this on the evidence. ~~Did Clara Nemes~~
8 ~~act with Manlio Severino and other people to keep this~~
9 ~~Limpio Services thing operating and to keep control over it~~
10 ~~so it didn't get out of control? That is the question.~~

11 Now, he suggests to you that you have here a
12 bookkeeper making a little over \$200 a week. Indeed, \$800
13 a month. And this \$200 a week bookkeeper has got a home,
14 for which she is paying \$575 a month rent, \$575 a month rent
15 is paid by this \$200 a week bookkeeper. And during a very
16 short period of time, about three months after this Tarpetto
17 "loan" was extended to her, she invested over \$8,000 with
18 her stockbroker.

19 A \$200 a week bookkeeper. And another \$4,200
20 in personal expenses, in cash and merchandise.

21 Perhaps, ~~if you choose to believe the story that~~
22 ~~she gave Percy.~~ I mean actually being truth rather than
23 just being a story, you believe that all of a sudden she
24 decided to borrow some money and live way beyond her means,
25 hoping that at a later time she would, I guess, sell her

2 that the Government is a party and that the prosecution is
1 jglt 870

2 jewelry and pay back all this money and then move out of
3 the \$585 a month apartment, having had her fling for a year,
4 having enjoyed life, sell all the furniture and sell her
5 stock and go back to living as a \$200 a week bookkeeper, you
6 are privileged to believe that, if you choose to believe
7 that.

8 I suggest as jurors you do not have to leave your
9 common sense outside the door. This is one of the chinks that
10 Mr. Russo had talked about. I don't think it is a whole.
11 I think it is a piece in a puzzle.

12 ~~Mr. Russo suggests there is no words by Mrs.~~
13 ~~Nemes at all. Well, there were.~~ There were words by Mrs.
14 Nemes to Percy Karlin after the balloon went up. Timing is
15 important here. You have to ask yourself, does a normal
16 person, who has a source of income, either borrowed or earned
17 or however, cease, just absolutely cease, using her checking
18 account to pay her rent and daily living expenses just
19 because a subpoena is served on a company that she keeps the
20 books for? ~~Does she run down to the bank and change, submit~~
21 ~~a new corporate resolution? Incidentally, for a corporation~~
22 ~~which doesn't exist.~~

23 111, I believe, was that certificate from New
24 York State that said that Tarpetto Cleaners is not a corpora-
25 tion, although there is a corporate seal on the back.

1 jglt 871

2 Corporate seals, you may find from your common
3 experience, are something you can purchase in any stationery
4 store.

5 But does an innocent person run down to the bank
6 and change the signature card to include the uneducated,
7 semi-literate lady whom they have been using as the figure-
8 head of this cleaning company?

9 Now, Olga Vera, as testified by her daughter
10 yesterday, maybe she gave an insight more than we know,
11 talking about ethnics and nationalities and things like
12 that, but one interesting insight, she said that "Where we
13 come from, or in our culture, that is, I guess either Cuban
14 or Hispanic culture, being a President of something is a
15 position of great authority. It does not necessarily mean
16 ownership." At least that's what I understood, and of course,
17 your recollection controls.

18 And Olga Vera indeed must believe that she is the
19 president of this company, but that's about as far as it
20 goes.

21 Now, the other point which I think I will
22 respond to is this thing about fictitious employees.

23 If I recall the testimony, Marjorie Murphy
24 testified that she figured out the payroll of the employees
25 from the books she had.

1 jglt 872

2 You recall Percy Karlin's testimony was that
3 Manny kept a third book. There was one at Kent, somebody up
4 at Kent kept that payroll, and apparently once every other
5 week, they were on a bi-weekly method, there would be a
6 collect for twice the amount, the payrolls would be combined.

7 I don't think Mr. Russo is suggesting to you that
8 those two \$100 bills were meant to cover the entire Kent
9 payroll, especially since the checks fluctuated by over
10 \$1,000 every other week. But, anyway, according to Percy
11 Karlin's testimony, there is three books, one at Kent, one
12 at Sprain Brook, which were kept, and ~~a third book which is~~
13 ~~kept by Manlio Severino so at the end of the year they~~
14 ~~would have a set of legitimate looking figures which would~~
15 ~~match the figures in the book so they wouldn't get in trouble~~
16 with the tax and cost reports and everything else.

17 Contrary to what Mr. Russo said in his argument,
18 unless I misunderstood him, ~~all these payrolls, both ficti-~~
19 ~~tious from Limpio and the actual Severino, Parisi, Annette~~
20 ~~Severino fictitious payroll, all going in the cost report,~~

21 Now, ~~the son and the daughter and mother were~~
22 ~~in the cost report~~ under the general payroll of the home.
23 That was in that computer sheet. There is no doubt about
24 that. There is no evidence to the contrary. The fictitious
25 payroll and every other bit of money that went out of Limpio,

1 jglt 873

2 whether it went to Tarpetto or any other place, was all
3 included in that big, lump sum, that contract price, which
4 I think in '72 was 55 or 75 thousand dollars, and in '73
5 was, I think on the cost report, 85 or 90 thousand dollars.
6 That is the contract price, and that includes actual cost
7 plus the profit.

8 So don't be misled by saying well, this wasn't
9 here because she paid it back. It makes no difference where
10 the money went. ~~The fact remains, you get right back to~~
11 ~~Limpio itself. Fictitious contract, cost and the addition~~
12 ~~over the cost is a part that should not have been claimed.~~

13 Whether they keep that in an old mayonnaise
14 jar or in the bank or put it in Tarpetto or whatever they do
15 with it, it is still included in the gross amount of profit
16 which is wrongly claimed on the cost report.

17 Now, that is not -- I don't think there is any
18 big problem. So Mr. Russo's talk about red herrings, that
19 is no red herring. That is a fact. That is in the evidence,
20 that is in the cost report.

21 The basic thing is that, ~~Limpio for the first~~
22 ~~couple of years was a sham, it was a fantasy of Manlio~~
23 ~~Severino~~, and for the third year it became a corporation only
24 you may find, from the evidence, because he had a deal with
25 Book. With Book he had a live one. When Book bought the home

1 jglt 874

2 he bought an \$85,000 contract and Limpio really started
3 making money from outside, and that's when Tarpetto was
4 evolved.

5 Now, I think that you may find that Clara Nemes'
6 role goes way beyond that of a \$200 a week accountant. The
7 evidence must speak for itself. ~~There is nothing in the~~
8 ~~evidence that says one way or the other.~~ Therefore, you
9 must draw inferences from the evidence. Why would Clara
10 Nemes be the beneficiary of between 10 and 15 thousand
11 dollars of money in the Tarpetto? Why does Manlio Severino
12 go down to the bank, submit a corporate resolution, make
13 her the sole signatory on this first Tarpetto signature
14 card and then Clara spending the money for a year? And then
15 why all of a sudden, if that is okay by any stretch of the
16 imagination, why does a little thing like being subpoenaed
17 by a grand jury stop all this?

18 How many bookkeepers do you know that are
19 spending 7 or 8 hundred dollars a month out of a second bank
20 account?

21 Now that, ladies and gentlemen, is evidence
22 from which you may infer that Clara Nemes was much more to
23 the Severino-Karlin group than just a mere bookkeeper.
24 She was a savory, smart, resourceful accountant who kept the
25 books of Sprain and went up to Kent, kept their books, and

1 jglt 875

2 she also kept the books of Limpio on the side, and ~~she~~
3 ~~controlled Limpio.~~

4 Olga Vera had nothing to do. The only thing
5 Olga Vera did, the only thing you will find from all this
6 evidence, is her signature on payroll checks. And ~~whose~~
7 ~~writing is on the checks?~~ Either Manlio Severino's or
8 Clara Nemes'.

9 Limpio Services was completely controlled by
10 Manlio Severino and Clara Nemes. ~~If it weren't for Tarpetto,~~
11 ~~that is the importance of Tarpetto, Mr. Russo could maybe~~
12 ~~make a meritorious argument that she is just a mere \$200 a~~
13 ~~week bookkeeper.~~

14 Certainly it seems unfair on what is charged as
15 a massive fraud against the government by people who are
16 principals of corporations and present partners who are
17 making 50, 60, 100 thousand dollars a year, to drag in an
18 employee. But you don't have a mere employee here. You have
19 someone who is more than an employee. ~~There is no evidence~~
20 ~~as to what Clara Nemes' exact arrangement was with Severino~~
21 ~~and Karlin.~~ All we know is that she had a lot of money to
22 spend and you know from your own experience how many \$200
23 a week anythings can afford to live in a \$575 a month house
24 and afford to have over \$8,000 and have their own stockbroker.
25 That is the evidence that speaks loudly.

1 jglt 876

2 Now, one last thing. This 1974 HE-2P for
3 Kent, which Mr. Russo has shown you a page of, has demonstrated
4 that cleaning services did not include the money which
5 apparently at this time is "lent" to Tarpetto. That means
6 nothing, because, as you recall from Mr. Karlin's testimony,
7 the cost report for each year is not made until about the
8 third month or maybe the fourth month of the succeeding year.

9 ~~So what are we talking about? A 1974 cost~~
10 ~~report which is being prepared in the spring of 1975. And~~
11 ~~what's happening in 1975? The balloon is going up. And it~~
12 ~~was about that time when Severino and Nemes and everybody~~
13 ~~started running around covering their tracks, which brings~~
14 ~~me to the last point.~~

15 You can look at these ledger sheets and look
16 at these little cryptic notes in pencil and decide for
17 yourself, on checkstubs and on bills and on ledger sheets,
18 whether or not Clara Nemes, the loyal bookkeeper, was duly
19 making notes for the accountant to come in and check and the
20 bumbling, idiot accountant would just overlook it or was
21 this something that the bumbling, idiot accountant never saw,
22 because it wasn't his job to see and later on, in the interim,
23 the frantic interval between the time the subpoena hit and
24 the time the record were delivered, some adjustments were
25 made here and there to cover tracks.

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1 jglt 877

2 That is solely a question of fact for you
3 jurors to determine.

4 That's it. I can't think of any other way that
5 I can present the evidence to you. You have been sitting
6 here for, Lord, two and a half hours, three hours, listening
7 to us talk.

8 Tomorrow the Judge is going to charge you and
9 then we all have to shut up and you get a chance to say
10 something.

11 I want you to go into the jury room, I want you
12 to think carefully about the testimony. By all means, look
13 at the exhibits. If you want to hear testimony read back,
14 that is your privilege, although I guess Mr. Greenberg
15 would have a nightmare if somebody would come out and say
16 "We want the whole case read back."

17 But this is your job. You have to decide the
18 case on the facts, not on any consideration of who is doing
19 what to whom, people's background. You have to decide it on
20 the facts.

21 And I am saying to you that based on these facts,
22 based on this crime, as will be charged to you by Judge Wyatt
23 tomorrow morning, we have sustained our burden. Mrs. Nemes
24 is in fact innocent until you walk in that jury room and
25 you take your vote and at that time, I am asking you, based

1 jglt 878

2 on this evidence, to change that presumption of innocence
3 to a finding of guilt, and do that on the facts and nothing
4 but the facts.

5 And like Mr. Russo, I thank you. This type of
6 case is extremely difficult to present to a jury because we
7 have to walk a narrow line between insulting your intelli-
8 gence by being too basic, and burdening you completely with
9 either documents or with words.

10 I observed carefully during the last three
11 weeks, you have been attentive, you have been interested,
12 and whatever verdict you bring will be in the interest of
13 justice.

14 And with that, I thank you very much.

15 THE COURT: Madam Foreman and ladies and gentlemen
16 of the jury, we will meet tomorrow morning at 9:30 for my
17 instructions.

18 Until then, you are excused. Do not discuss
19 the case amongst yourselves or with anybody else.

20 Thank you. You may retire.

21 (Jury left the courtroom.)

22 THE COURT: Anything else tonight?

23 All right.

24 (Adjournment was taken to Friday, October 15,
25 1976 at 9:30 a.m.)

EXCERPT FROM GOVERNMENT'S
REQUEST TO CHARGE

CLW:bmj
1-262

REQUEST NO. 6

Conspiracy -- Second Element

Once satisfied that the conspiracy charged existed, you must ask yourself who its members were. In deciding whether the defendants were members of the conspiracy you should also consider whether on all the evidence the defendants knowingly and purposely entered the conspiracy.

In determining whether each defendant became a member of the conspiracy, you must determine not only whether that defendant participated in it but whether he or she did so with knowledge of its unlawful purpose and a specific intent to help carry it forward as an associate or worker in it. Did he or she join with an awareness of at least some of the basic aims and purposes of the conspiracy?

Knowledge is a matter of inference from facts proved. It is not necessary that a defendant be fully informed as to all the details of the scope of the conspiracy in order to justify any inference of knowledge on his or her part. To have guilty knowledge a defendant need not know the full extent of the conspiracy and all of its activities.

Conspiracy -- Second Element

The guilt of an alleged conspirator is not measured by the extent or duration of his alleged participation.

In this regard I want to caution you that mere association with a conspirator does not make one a member of a conspiracy, nor is knowledge without participation sufficient. What is necessary is that a defendant participate with knowledge of at least some of the purposes of the conspiracy and with a specific criminal intent to aid in the accomplishment of those unlawful ends.

You ask yourself, was he or she one of the alleged group of Medicaid and Medicare cheats, a knowledgeable participant with them or a mere outsider or spectator?

Once you have found the conspiracy to exist and a defendant to have participated knowingly in it, the extent of his or her participation has no bearing on his or her guilt or innocence. The guilt of a conspirator is not measured by the extent or even the duration of his or her participation or the extent of the fruits he or she may have expected. Even if he or she participated in it or was to participate in fruits from the object of the alleged scheme to a degree more limited than that of another co-conspirator, he or she is equally culpable as long as he or she was in fact a conspirator.

Conspiracy -- Second Element

When people enter into a conspiracy to accomplish an unlawful end, they become agents for one another in carrying out the conspiracy. Hence, the acts or declarations of one in the course of the conspiracy and in furtherance of the common purpose are deemed to be the acts of all and all are responsible for such acts.

Accordingly, if you find, in accordance with these instructions, that the alleged conspiracy existed, then acts done and statements and declarations made in furtherance of the conspiracy by a person found by you to have been a member of the conspiracy may be considered against each defendant, if you find he or she was a member, even though such acts or declarations were made in his or her absence and without the knowledge of the defendant.

It is important to note that this principle applies only to the acts and declarations done or made during the continuance of the conspiracy and in furtherance thereof, that is, to carry out an unlawful objective or purpose of the conspiracy. It does not apply to acts or declarations which do not have these characteristics.

From the charge of the Honorable Milton Pollack in United States v. Larch, 76 Cr. 114 (May 13, 1976) (Transcript 688-690).

COURT'S CHARGE TO THE JURY

1 jg 1

2 UNITED STATES OF AMERICA

3 vs.

76.Cr. 534 (IBW)

4 MANLIO S. SEVERINO,
5 LAWRENCE J. SEVERINO, and
6 CLARA NEMES.

7 New York, N. Y.

8 October 15, 1976 - 9.45 A.M.

9
10 (Trial resumed, jury present)

11 THE COURT: Good morning, members of the jury.

12 CHARGE OF THE COURT

13 (Wyatt, J.)

14 Madam Foreman, ladies and gentlemen of the jury,
15 we are now at the final stage of this trial. The case is
16 about to be submitted to you, the jury, for your decision.
17 Your final function is to decide the fact issues in this
18 case. And, of course, your decision of those fact issues
19 determines whether your verdict as to the defendant Clara
20 Nemes is guilty or not guilty.

21 You will recall that I explained to you in the
22 beginning that Mrs. Nemes and the other two defendants were
23 named as defendants in the first count, the conspiracy count,
24 that this was the only count in which Mrs. Nemes was named,
25 that Manlio Severino and Lawrence Severino were named in

1 jg 2

2 other counts, counts which are called substantive counts,
3 that Lawrence Severino, as this trial began, was not here
4 on trial for reasons with which the jury was not concerned,
5 and that the case here would proceed to trial against Manlio
6 Severino and Mrs. Nemes.

7 You have seen, in the last few days, Manlio
8 Severino had to be dropped from the case, and the case is
9 being submitted to you on the first count only and only as
10 to Mrs. Nemes. The fact that other defendants are named
11 in the indictment and for one reason or another are not here
12 on trial is irrelevant to the issue whether the defendant
13 Clara Nemes is guilty or not guilty.

14 Under our system, guilt is personal. ~~The guilt~~
15 ~~or innocence of the defendant on trial, Clara Nemes, must~~
16 ~~be determined on the evidence or lack of evidence as to her~~
17 ~~and not that against somebody else.~~

18 Now, in making your decision, you act as ministers
19 of justice and you discharge an obligation of citizenship
20 which it is not too much to call sacred. In making your
21 decision, you are to adopt an attitude of complete impar-
22 tiality, complete fairness, you are to appraise the evidence
23 calmly and objectively and without any bias or prejudice for or
24 against the Government or for or against the defendant.

25 In this connection I should add that the fact

the commission of which is charged as the object of the
1 jg 3

2 that the Government is a party and that the prosecution is
3 brought in the name of the United States of America does
4 not entitle the Government or its witnesses to any greater
5 consideration than that accorded to the defendant. At the
6 same time, the Government and its witnesses are entitled to
7 no less consideration. All parties, governments and
8 individuals alike, stand as equals here before the bar of
9 justice.

10 You, the jurors, are the sole and exclusive
11 judges of the facts. You determine the weight of the
12 evidence and the credibility of all witnesses. You decide
13 any and all conflicts in the evidence. All differences in
14 the evidence you resolve. You draw whatever reasonable
15 inferences are justified from the facts as you may find
16 those facts to be.

17 My function at this point is to give you
18 instructions as to the applicable law. Your duty is to
19 accept and to follow my instructions and apply them to the
20 facts as you may find the facts to be.

21 Now, members of the jury, in determining what the
22 facts are, you are to look solely to the sworn testimony and
23 other evidence, documentary evidence received, and of course
24 you take into account any evidence brought out in the cross
25 examination of witnesses.

2 You must rely on your own recollection of the
3 evidence because it is your recollection which controls, as
4 you may have heard counsel say to you several times on
5 yesterday. What I may say as to any fact during these
6 instructions or earlier at the trial and what counsel said
7 yesterday in their closing arguments or at any other point
8 in the trial are not to be taken in place of your own
9 recollection, which is what controls.

10 I also emphasize that questions asked a witness
11 by counsel or by the Court are never evidence. It is only
12 the answer which is evidence and never the question.

13 Now, you are not to assume that I have any
14 opinion as to the guilt or innocence of the defendant or
15 the truth or falsity of any of the charges. In this
16 connection, you heard me occasionally ask questions. You
17 are not to attribute any significance to any question asked
18 by me. The object of such questions was only an attempt
19 to make some point clearer for the jury and it was never
20 intended to indicate any opinion by the Court.

21 Similarly, the fact that the Court has made
22 rulings in the course of the trial, has granted motions or
23 denied motions, is, again, not to be taken as any indication
24 that the defendant is believed by the Court to be guilty
25 or not guilty. These rulings required to be made during

1 pg 5

2 the course of a trial reflect matters of law, which as I've
3 said before are not of concern to the jury.

4 At the same time, objections to the admissibility
5 of evidence, whether for the Government or for the defendant,
6 are not to be considered in any respect, and I might say that
7 counsel not only have the right but it is their duty to
8 press whatever legal objections there may be to the admiss-
9 ibility of evidence.

10 If I should mention some facts during these
11 instructions and should fail to mention some other facts, you
12 are to attach no significance to it. Nothin said in these
13 instructions, nothing said by me at any time during the trial
14 is to be taken by you as any indication of any views by me as
15 to the credibility of any witness if how you are to decide
16 the guilt of innocence of the defendant.

17
18 (Continued on next page)
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25

The Government has the burden of proving the charge against the defendant beyond a reasonable doubt. That burden does not shift and it remains upon the Government throughout the entire trial. The defendant does not have to prove her innocence. She is presumed to be innocent of the accusations contained in the indictment and that presumption of innocence disappears only when and if you, the jury, are satisfied that the Government has sustained its burden of proving the guilt of the defendant beyond a reasonable doubt. And in weighing the evidence to determine whether there has been proof beyond a reasonable doubt you should consider the quality and the substance of the evidence and not the quantity or the number of witnesses.

Now, members of the jury, what is a reasonable doubt? We say that a reasonable doubt is a doubt founded on reason and arising out of the evidence or lack of evidence. It is a doubt which a reasonable person has after carefully weighing all the evidence. It is a doubt which is substantial and not shadowy. A reasonable doubt is one which appeals to your common sense, your reason, your experience. It is not an excuse to avoid the performance of an unpleasant duty. It is not sympathy for the defendant. A reasonable doubt is not a vague, speculative, imaginary doubt but such a doubt as would cause prudent people to hesitate before

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2 acting in matters of importance to themselves.

3 Now, proof beyond a reasonable doubt does not
4 mean proof to a positive certainty or beyond all possible
5 doubt. If that were the rule, few men or women, however
6 guilty, would ever be convicted, because it is practically
7 impossible for a person to be absolutely and completely
8 convinced of any controverted fact, which is not by its
9 nature capable of being proved to a mathematical certainty.
10 In consequence, the law in a criminal case is that it is
11 sufficient that the guilt of a defendant be established
12 beyond a reasonable doubt and not beyond all possible doubt.

13 Now, Madam Foreman, ladies and gentlemen of the
14 jury, ~~the federal law on conspiracy came about because a~~
15 ~~conspiracy, sometimes referred to as a partnership in crime,~~
16 ~~presents a greater potential threat to the public than a~~
17 ~~lone, single wrongdoer. Concerted action for criminal~~
18 ~~purposes generally makes it possible to accomplish more~~
19 ~~important and more complex results than those which an~~
20 ~~individual acting alone could accomplish.~~

21 ~~Group association also increases the likelihood~~
22 ~~that a criminal venture will be successful. At the same~~
23 ~~time, group association renders detection more difficult~~
24 ~~than when one individual is acting alone.~~ For these and
25 other reasons Congress enacted a section of the United States

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2 Code which in relevant part is as follows:

3 "If two or more persons conspire either
4 to commit any offense against the United States
5 or to defraud the United States or any agency
6 thereof in any manner or for any purpose, and
7 one or more of such persons do any act to effect
8 the object of the conspiracy, each shall be
9 guilty of an offense."

10 This is the conspiracy law which the defendant
11 Clara Nemes is charged with violating.

12 Now, from my reading of the conspiracy law you
13 have heard that for a violation of the law there must not
14 only be a conspiracy but also at least one act by one of
15 the conspirators to effect the object of the conspiracy.
16 This is a required act which is called an overt act, and I
17 will explain that term in more detail in just a moment.

18 Now, conspiracy or concerted action or partner-
19 ship to violate federal law or to defraud the United States
20 is thus a crime entirely separate, distinct and different
21 from the substantive law crimes, the violation of which may
22 be the objects of the conspiracy.

23 And so, with that by way of background, we turn
24 to the specific charge against the defendant as set forth
25 in the first count of the indictment, which I will read. I

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2 read it at the beginning of the trial, but I shall read it
3 now so that as I explain the applicable law you will have
4 in mind with what the defendant Mrs. Nemes is charged.

5 "The Grand Jury charges:

6 "1. On July 30, 1965 Titles XVIII and XIX of the
7 Social Security Act (the Health Insurance for the Aged Act,
8 [hereinafter 'Medicare Act'], and the Medicaid Act) were
9 enacted creating the Medicare and Medicaid programs.

10 "2. The Medicare program is administered by the
11 Social Security Administration of the United States Depart-
12 ment of Health, Education and Welfare ('HEW') and provides
13 for basic protection for hospital and post-hospital services
14 for individuals age 65 or over who are entitled to retirement
15 benefits or individuals under age 65 who are entitled to
16 retirement benefits due to disability. Reimbursement of
17 the entire cost of services is made by HEW.

18 "3. Pursuant to the Medicaid Program, HEW shares
19 with each state the cost of medical services to families
20 with dependent children and to aged, blind, or permanently
21 and totally disabled individuals whose income and resources
22 are insufficient to meet the costs of necessary medical
23 services. The Medicaid program further provides for
24 rehabilitative and other services to help such families and
25 individuals attain or retain capability for independent and

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2 self-care.

3 "4. Pursuant to the Medicaid Act each state must
4 promulgate a plan for Medical assistance and administer its
5 own Medicaid programs. The State of New York is reimbursed
6 by HEW at the rate of fifty cents for each dollar paid for
7 federally eligible Medicaid claims.

8 "5. Under both the Medicare and Medicaid programs
9 duly certified nursing homes providing services to patients
10 who are eligible for either Medicare or Medicaid coverage
11 must submit annually a cost report for each program, (For
12 Medicare: 'Extended Care Facility - Statistical and Other
13 Data', SSA Form 1750, ['Form SSA 1750']; and for Medicaid:
14 'Annual Report of Long-Term Care Facility', Form HE-2P,
15 ['Form HE-2P'])). Each cost report lists patient statistics
16 and all costs and expenditures incurred in the operation of
17 the nursing home and is used to compute the rate per patient-
18 day at which the nursing home will be paid under each
19 program.

20 "6. The Form SSA 1750 for the Medicare program is
21 submitted to a fiscal intermediary which, pursuant to a
22 contract with the Social Security Administration, processes
23 claims, determines the rate of reimbursement and distributes
24 funds.

25 "7. The Form HE-2P for the Medicaid program is

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2 submitted to the New York State Department of Health for
3 processing where it is analyzed and a rate of reimbursement
4 is determined therefrom. This rate governs the reimburse-
5 ment of a nursing home's Medicaid claims.

6 "8. Both the fiscal intermediary and the State of
7 New York are reimbursed by HEW.

8 "9. At all times relevant the defendant MANLIO
9 SEVERINO was the business manager of and operated the
10 Sprain Brook Manor Nursing Home ('Sprain Brook') located
11 at 77 Jackson Avenue, Scarsdale, New York in the Southern
12 District of New York. The defendant CLARA NEMES was the
13 bookkeeper for Sprain Brook. Sprain Brook was owned by the
14 defendant LAWRENCE J. SEVERINO and other members of the
15 Severino family until on or about October 31, 1973.

16 "10. At all times relevant, Travelers Insurance
17 Company, Hartford, Connecticut ('Travelers') had a contract
18 with HEW to act as fiscal intermediary between Sprain Brook
19 and the Social Security Administration in the distribution
20 of funds pursuant to claims submitted under the Medicare
21 Act.

22 "11. Sprain Brook submitted a Form SSA 1750 for
23 each of the years 1971, 1972 and 1973 to Travelers and a
24 Form HE-2P for each of the years 1971 and 1972 to the New
25 York State Department of Health.

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 The Grand Jury further charges:

2 "12. From on or about January 1, 1971, up to and
3 including the date of the filing of this indictment, in
4 the Southern District of New York and elsewhere MANLIO S.
5 SEVERINO, LAWRENCE J. SEVERINO and CLARA NEMES, the
6 defendants, unlawfully, wilfully and knowingly did combine,
7 conspire, confederate and agree together and with each
8 other and with persons to the Grand Jury known and unknown,
9 to defraud the United States and its departments and
10 agencies in connection with the performance of their lawful
11 governmental functions by obstructing and hindering the
12 Department of Health, Education and Welfare in administering
13 the Medicare and Medicaid Acts and to violate Title 18,
14 United States Code, Sections 287 and 1001.

15 "13. It was a part of said conspiracy that the
16 defendants and their co-conspirators would and did agree to
17 defraud the United States of its lawful right to have HEW
18 administer the provisions of the Medicare and the Medicaid
19 Acts fairly and impartially, without undue influence,
20 unlawful inducement, false representation, favor or fraud,
21 by causing both Travelers and the State of New York to file
22 claims for reimbursement under said Medicare and Medicaid
23 Acts respectively, which were based in part upon Forms
24 1750 and HE-2P and other documents, which were materially
25 false, fictitious and fraudulent.

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2 "14. It was further a part of said conspiracy that
3 the defendants and their co-conspirators unlawfully, wilfully
4 and knowingly would and did make and cause to be made false
5 claims upon and against HEW, an agency and department of
6 the United States.

7 "15. It was further a part of said conspiracy that
8 the defendants and their co-conspirators, in matters within
9 the jurisdiction of a department and agency of the United
10 States, that is, HEW, unlawfully, wilfully and knowingly,
11 would and did falsify, conceal and cover up, and would and
12 did cause to be falsified, concealed and covered up by trick,
13 scheme and device, material facts and would and did make
14 and cause to be made false, fictitious and fraudulent state-
15 ments and representations and would and did make and use
16 and cause to be made and used false writings and documents
17 knowing the same to contain false, fictitious and fraudulent
18 statements and entries.

19 "16. Among the various means whereby the defendants
20 and their co-conspirators would and did carry out the objects
21 of said conspiracy were the following:

22 "(a) At all times relevant herein, defendant
23 MANLIO S. SEVERINO operated Sprain Brook. The owners of
24 Sprain Brook were defendant MANLIO SEVERINO's son DR.
25 LAWRENCE J. SEVERINO, his daughter, Joan Severino Paresi;

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2 and his wife Annette Severino.

3 "(b) Defendants and their co-conspirators
4 would and did falsify and overstate various expenditures,
5 costs and expenses in the books and records of Sprain Brook.

6 "(c) Defendants and their co-conspirators
7 would and did disguise in the books and records of Sprain
8 Brook expenses which were unrelated to Sprain Brook and in
9 many cases personal to them.

10 "(d) Defendants and their co-conspirators
11 would and did charge payroll expenses for salaries of
12 employees who did little or no work at Sprain Brook.

13 "(e) Defendants and their co-conspirators
14 would and did prepare and file on behalf of Sprain Brook
15 (a-Form SSA-1750 and other documents for each of the years
16 1971, 1972 and 1973 with Travelers and a Form HE-2P for each
17 of the years 1971 and 1972 with the New York State Department
18 of Health.

19 "(f) Said documents would and did show a
20 total of approximately \$276,000 in increased, fraudulent
21 costs and expenditures as a result of false entries, among
22 others referred to in subparagraphs (a) through (d) above
23 in order to increase the rate of reimbursement for Medicare
24 and Medicaid claims.

25 "(g) In Forms SSA-1750 and HE-2P filed for

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2 the year 1973 the 1973 defendants and their co-conspirators
3 would and did fail to disclose the lack of an arms-length
4 -relationship between Sprain Brook and Limpio Services, Inc.,
5 a sham corporation which was formed to show an increase in
6 the costs of Sprain Brook.

7 "(h) Defendant and his co-conspirators would
8 and did submit Owners Compensation Evaluation Forms to
9 Travelers which falsely showed that certain owners were
10 employed when they were not and failed to disclose that
11 other owners were receiving compensation.

12 "OVERT ACTS

13 "In furtherance of the said conspiracy and to
14 effect the objects thereof, the defendants and their co-
15 conspirators committed the following overt acts, among
16 others, in the Southern District of New York and elsewhere:

17 "1. During July 1972 defendant MANLIO S. SEVERINO
18 sent a Form SSA-1750 to Travelers.

19 "2. During December of 1972, defendant MANLIO S.
20 SEVERINO signed a signature card as 'Salvatore Severino,
21 Treasurer', for a checking account in the name Limpio
22 Services, Inc.

23 "3. During December 1972 and January 1973, defendant
24 MANLIO S. SEVERINO had a conversation with another about
25 Limpio Services, Inc.

"4. During the period 1971 through 1973 defendant MANLIO S. SEVERINO had numerous conversations with defendants LAWRENCE J. SEVERINO and CLARA NEMES and his other co-conspirators about falsifying the Forms SSA-1750 and HE-2P for Sprain Brook."

Now, such is the first count of this indictment and the defendant by her plea of not guilty has denied the charges as just read to you.

Now, members of the jury, the charges, you will keep in mind, are in the context of the Medicare and Medicaid health programs, paid for in whole or in part by the United States Government. Under these programs a nursing home is paid for services rendered to eligible patients. The amount paid to the nursing home is based on the costs incurred in the operation of the nursing home as shown in its statement of costs submitted each year.

~~The charges here are that the defendant Clara Nemes and others conspired to submit false statements of costs and thus to defraud the United States and to violate federal laws against making false claims against the United States and against making false statements to the United States.~~

Now, before we deal with the nature of conspiracy let us say something briefly about the substantive offenses,

2 deliberations. The function of a jury is to determine the
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2 the commission of which is charged as the object of the
3 conspiracy.

4 It is not essential to the theory of this
5 indictment that a conspiracy to defraud the United States
6 be designed to cause some financial loss to the Government
7 or that any financial loss in fact occurred. To defraud
8 the United States means not only to cheat the Government
9 out of money or other property, but it also means to impair,
10 influence, interfere with and obstruct one of the lawful
11 governmental functions of the United States by dishonest
12 means.

13 It is not necessary, however, that any actual
14 impairment, obstruction or interference be shown. A
15 conspiracy of this kind must have as its central feature
16 the use of dishonest means in dealing with an employee of
17 a Government agency charged with carrying out governmental
18 duties.

19 The Government has the right to have the
20 expenditure of its funds in Medicare and Medicaid programs
21 conducted free from fraud, deceit, misrepresentation, con-
22 cealment, interference or obstruction. Thus the term
23 "conspiracy to defraud the United States" is an allegation
24 that the defendant conspired to furnish false information
25 to and withhold truthful information from the Department of

will simply be either guilty or not guilty.

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2 Health, Education and Welfare, which is of course an agency
3 of the United States within the meaning of the statute.

4 The conspiracy is also charged to have had as
5 its object the violation of two federal criminal laws.
6 Section 287 of Title 18 of the United States Code makes it
7 an offense for anyone knowingly to make a false claim upon
8 or against an agency of the United States. Section 1001
9 of Title 18 of the United States Code makes it an offense
10 knowingly and wilfully to make false statements or to use
11 any false writing or document in connection with matters
12 within the jurisdiction of any federal department or agency,
13 knowing that the document contains false information.

14 Now, in order to find the defendant guilty, the
15 Government must prove beyond a reasonable doubt the follow-
16 ing essential elements:

17 The first essential element is the existence of
18 the conspiracy as charged in the indictment, that is, that
19 ~~sometime between January 1, 1971 and June 8, 1976, when the~~
20 ~~indictment was returned, in the Southern District of New~~
21 ~~York a conspiracy existed between the defendant on trial,~~
22 ~~Mrs. Nemes, and any other co-conspirator,~~ as charged in the
23 first count.

24 Now, I referred to the geographical area the
25 Southern District of New York. That is the area over which

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2 this court has jurisdiction, and geographically that includes
3 New York County, the island of Manhattan, where we are,
4 Bronx County, Westchester County and all the other counties
5 in New York on both sides of the Hudson River up to the
6 southern border of Albany County. That is the first
7 essential element.

8 ~~The second essential element is that the~~
9 ~~defendant Clara Nemes knowingly associated herself with the~~
10 ~~conspiracy, and the third essential element is that one of~~
11 ~~the conspirators knowingly committed, within the Southern~~
12 ~~District of New York at least one overt act.~~ And I will
13 define "overt act" in just a moment.

14 It is not required that the Government prove
15 that the conspiracy started and ended on dates alleged in
16 the indictment. It is sufficient if you find that a
17 conspiracy was formed and existed for some time within that
18 period. The offense of conspiracy, members of the jury,
19 is complete when the unlawful agreement is made and any
20 single overt act is thereafter knowingly committed by at
21 least one of the co-conspirators.

22 In other words, it is not necessary to the guilt
23 of a conspiracy that the conspiracy succeed or that all or
24 any of the objectives of the conspiracy be attained. Nor
25 is it necessary, in order to prove the conspiracy, that

understand and I expected these to be covered in the Court's
1 jg 20

2 all of the unlawful purposes or objects of each conspiracy
3 were agreed upon. It is sufficient if the proof establishes
4 beyond a reasonable doubt that one of such alleged purposes
5 in the conspiracy was agreed upon and understood.

6 A conspiracy, I repeat, is complete and the
7 offense committed when the unlawful agreement is made and
8 any single overt act is knowingly committed by at least one
9 of the co-conspirators.

10 Now we come to the large question what is a
11 conspiracy. A conspiracy is a combination or an agreement
12 by two or more persons by concerted action to accomplish a
13 criminal or unlawful purpose, in this instance to defraud
14 the United States within the meaning of that term as I've
15 explained it and to violate laws concerning the making of
16 false claims and the making of false statements to an agency
17 of the United States.

18 The gist of the crime of conspiracy is the
19 unlawful combination or agreement to violate the law or to
20 defraud the United States. As I said a moment ago, whether
21 or not the conspiracy is accomplished, what they conspired
22 to do, is immaterial to the question of their guilt of the
23 charge of conspiracy.

24 Members of the jury, a conspiracy is sometimes
25 called a partnership in crime in which each conspirator,

each member of the conspiracy, becomes the agent and partner of every other member. But to establish a conspiracy the Government is not required to show that two or more persons sat around a table and entered into a solemn pact orally or in writing stating that they have formed a conspiracy to violate the law and setting forth the details of the plan, the means by which the unlawful project will be carried out and the part to be played by each conspirator.

It would indeed be most extraordinary if there ever were such a formal document or specific oral agreement in the case of a criminal conspiracy. Your common sense would tell you that when men and women in fact undertake to enter into a criminal conspiracy, much is left to unexpressed understanding. From its very nature, a conspiracy is almost always secret in its origins and secret in its execution.

~~It is sufficient if two or more persons in any manner, through any contrivance, impliedly or tacitly come to an understanding in common to defraud the United States or to violate the law~~ Express language or specific words are not required to indicate assent or attachment to a conspiracy.

In determining whether there has been an unlawful agreement, you may judge acts and conduct of the alleged

members of the conspiracy, whether named as defendants or co-conspirators, which are done to carry out an apparent criminal purpose. Usually the only evidence available is of disconnected acts on the part of alleged individual conspirators, which acts, however, when taken together in connection with each other, show a conspiracy or agreement to secure a particular result as satisfactorily and as conclusively as more direct proof.

You must first determine, from all the evidence in the case, whether or not a conspiracy as charged in the indictment existed. You should not judge the character and effect of the conspiracy by dismembering it and viewing its separate parts but only by looking at it as a whole. It is sufficient if from proof of all the relevant facts and circumstances you find beyond a reasonable doubt that the ~~minds of at least two co-conspirators met in an understanding way so as to bring about a deliberate agreement to do the act charged in the indictment,~~ that is, to defraud the United States in the manner I've explained, and to violate the other two laws mentioned.

If you do conclude that a conspiracy as charged did exist, then you must next determine whether the defendant on trial, Mrs. Clara Nemes, was a member, that is, whether she knowingly and wilfully associated herself with the

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2 conspiracy. And in making this determination you should,
3 of course, consider all the evidence in the case.

4 Now, you heard the words "wilfully and knowingly."
5 "~~Knowingly, of course, means to do an act voluntarily and~~
6 ~~intentionally and not because of mistake or accident or some~~
7 ~~other such innocent reason. "Wilfully" means to act~~
8 ~~knowingly, deliberately and with a bad purpose and motive,~~
9 ~~but it is not necessary that the defendant know that she is~~
10 ~~breaking any particular law.~~

11 Now, members of the jury, the mere association
12 of a defendant with an alleged conspirator or mere knowledge
13 of the conspiracy does not alone establish participation in
14 a conspiracy, if you find that the conspiracy existed. ~~In~~
15 ~~determining whether the defendant Mrs. Nemes was a member~~
16 ~~of the conspiracy you should consider whether in some sense~~
17 ~~she joined and promoted the venture, did what she could to~~
18 ~~bring it about, had some stake or interest in its outcome,~~

19 Now, in using the words in the last few minutes
20 "knowingly and wilfully," we enter into what the law calls
21 intent, and, as you will appreciate, intent involves a
22 person's state of mind, and while this is a fact, it is a
23 fact which it is impossible to prove by direct evidence
24 short of an admission by a defendant. That is because you
25 cannot look in a person's mind and tell what his intentions

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2 were or her intentions.

3 However, like any other fact, intent may be
4 proved by circumstantial evidence, and proof of the circum-
5 stances behind a transaction may supply an adequate and
6 convincing basis for finding the intent of a defendant.

7 I said a moment ago "circumstantial evidence."
8 There are two kinds of evidence, direct evidence and circum-
9 stantial evidence. Perhaps I should say just a word about
10 them.

11 Direct evidence is where a witness testifies to
12 what he or she saw, heard, observed, what is known by virtue
13 of the sense of sight or hearing, for example. Circumstan-
14 tial evidence, on the other hand, is evidence of facts and
15 circumstances from which one may infer connected facts which
16 reasonably follow in the common experience of mankind.

17 In this building we usually take a simple example
18 of circumstantial evidence from the old Robinsoe Crusoe
19 story. you remember how one day Crusoe saw footprints in
20 the sand on the beach. Now, he, Crusoe, did not see a man
21 actually walking on the beach, but he immediately drew an
22 inference from the fact of the footprints that a man had
23 in fact been walking on the beach. And that's about all
24 there is to circumstantial evidence. You infer on the
25 basis of reason and experience from an established fact the

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2 existence of some related fact.

3 Now, you heard me say that an essential element
4 of the crime of conspiracy is that an overt act to effect
5 the object of the conspiracy be committed by at least one
6 of the co-conspirators after the unlawful agreement has
7 been made. An overt act is any step, action or conduct
8 which is taken to achieve, accomplish, further the object
9 of the conspiracy.

10 The purpose Congress had in mind when it made
11 an overt act an element of the offense is that while persons
12 may conspire and combine to do an unlawful act, yet they
13 may change their minds and do nothing to carry out the
14 combination or agreement. And if do nothing to carry
15 out the agreemen' then it will not constitute an offense.
16 because there has been no overt act.

17 And, of course, it is not necessary that an
18 overt act itself be criminal action or conduct taken to
19 achieve the object of the conspiracy. And, incidentally, it
20 does not make any difference that an overt act is alleged
21 in the indictment to have taken place at one testimony, if
22 you do, that it occurred at a different time. If you find
23 that it occurred on or about the date specified in the
24 indictment, that is sufficient.

2 Now, members of the jury, the guilt of a con-
 3 spirator, the guilt of a member of the conspiracy is not
 4 governed by the extent or duration of participation nor
 5 whether she or he had knowledge of all of the operations of
 6 the conspiracy. Thus, some conspirators may play major
 7 roles and some may play less important roles. Nor is it
 8 required that each conspirator know all of the members of
 9 the conspiracy and all of their activities.

10 Now, members of the jury, you will be glad to
 11 know that we are getting toward the end of these instructions,
 12 but we should say perhaps a word about the credibility of
 13 witnesses. Of course it is you, the jury, who pass on
 14 the credibility of all witnesses, and you determine the
 15 credibility of witnesses by using ordinary common sense.
 16 As practical men and women, you draw on your experience in
 17 meeting and dealing with people in your everyday business
 18 and social life. You take into account any inconsistencies
 19 or contradictions in the testimony, conflicts between the
 20 testimony of various witnesses, omissions, the demeanor of
 21 the witness, because the degree of credit to be given a
 22 witness should be determined by demeanor, relationship to
 23 the controversy and to the parties, bias or impartiality,
 24 reasonableness of the testimony, strength or weakness of
 25 the recollection, all viewed in the light of other testimony

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2 and the surrounding circumstances in the case.

3 You heard the witnesses. Were they frank,
4 open, truthful, candid? How did each witness strike you?
5 And so you weigh them on your scales based on your experience
6 in everyday life.

7 You may consider whether a witness has some
8 interest in the case or motive which might affect his or
9 her testimony. If so, you may consider this in weighing
10 credibility. An interested or motivated witness is not
11 necessarily unworthy of belief. It is only a factor to be
12 considered by you in determining what weight to give the
13 testimony.

14 ~~The law does not require a defendant in a~~
15 ~~criminal case to take the witness stand and testify, and~~
16 ~~no presumption of guilt may be raised and no inference of~~
17 ~~any kind may be drawn from the failure of a defendant to~~
18 ~~testify.~~

19 Now, the Government called as a witness Percy
20 Karlin, who openly admitted his involvement in the offenses
21 here charged and his wrongdoing. In the eyes of the law
22 he is ~~an accomplice in the same offense charged against the~~
23 ~~defendant Mrs. Nemes here on trial.~~

24 In the prosecution and detection of crime the
25 Government of necessity is frequently compelled to rely on

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2 the testimony of accomplices. Often it has no choice in
3 the matter. The Government must take the witnesses to
4 transactions as they are. An accomplice does not become
5 incompetent as a witness because of his participation in
6 the criminal act charged. If accomplices could not be
7 used, in many instances it would be difficult to detect and
8 prosecute wrongdoers, and this is particularly true in
9 conspiracy cases. Frequently it happens that only those
10 who participated have evidence which is relevant and impor-
11 tant in a case, if a prosecution is to succeed.

12 There is no requirement in the federal courts
13 that the testimony of an accomplice be corroborated. A
14 conviction may rest on the uncorroborated testimony of an
15 accomplice, if you find it credible and believable. In
16 this instance, however, you will understand that the
17 Government does claim corroboration as to various portions
18 of the testimony of the accomplice witness and claims such
19 corroboration from independent proof by other witnesses
20 who are not accomplices.

21 The fact that a Government witness is an accom-
22 plice may be considered by you as bearing upon credibility.
23 However, it does not follow that because a person has
24 acknowledged participation in a crime or is an accomplice
25 that he is not capable of giving a truthful version of what

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2 occurred. The testimony, however, should be viewed with
3 great caution and scrutinized carefully.

4 You will consider whether the testimony was
5 inspired by any motive of self interest, personal advantage
6 or hostility to a defendant so that he gave false or colored
7 testimony; you will consider whether the testimony was a
8 fabrication induced by a belief that as a result of that
9 testimony he will receive favorable consideration from the
10 Government; or you will consider whether the witness bared
11 himself publicly and made a clean breast and told the
12 truth. In short, did he decide after being caught to come
13 clean and tell the truth?

14 If you find that the testimony of this accomplice
15 was deliberately untruthful, you should reject it. On the
16 other hand, if upon a cautious and careful examination you
17 are satisfied that Percy Karlin has given a truthful version
18 and that the Government has maintained and sustained its
19 burden of proof in all other respects as outlined in the
20 instructions I've given you, then you have sufficient proof
21 upon which to bring in a verdict of guilty.

22 Now, members of the jury, we come to the conclu-
23 sion of my instructions. I say to you that each juror is
24 entitled to his or her own opinion. You should, however,
25 exchange views amongst yourselves, each with his or her

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2 fellow jurors. That is the very purpose of jury deliberation,
3 to discuss and consider the evidence, to listen to the views
4 and arguments of fellow jurors, to present your own individ-
5 ual views, to consult with one another, and to reach an
6 agreement based solely and wholly on the evidence, if you
7 can do so without violence to your own individual judgment.

8 Each one must decide the case for himself or
9 herself, but you should not hesitate to change an opinion
10 which after discussion with your fellow jurors appears to
11 be mistaken in the light of the discussion viewed against
12 the evidence and the law. However, if after carefully
13 considering everything you entertain a conscientious view
14 which differs from the others, you should not yield your
15 conviction because you are outnumbered or outweighed. Your
16 final vote must reflect your conscientious conviction as to
17 how the issue should be decided.

18 And, members of the jury, any verdict must be
19 unanimous.

20 Now, the jury should not consider or in any way
21 speculate about the punishment which the defendant may
22 receive if she is found guilty. Under your oath as jurors
23 you cannot allow a consideration of the punishment which
24 may be imposed upon the defendant if she is convicted to
25 influence your verdict in any way or to enter into your

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2 deliberations. The function of a jury is to determine the
3 guilt or innocence of a defendant on the basis of the
4 evidence and the instructions of the presiding judge. It
5 is the judge alone who has the duty and the responsibility
6 of determining the sentence if there is a conviction.

7 The charges here, Madam Foreman, ladies and
8 gentlemen of the jury, are most serious. The just deter-
9 mination of this case is important to the public. It is
10 equally important to this defendant. Under your oath as
11 jurors you must decide the case without fear or favor and
12 solely in accordance with the evidence and the law. If
13 the Government has failed to carry its burden, your sworn
14 duty is to bring in a verdict of not guilty. If the
15 Government has carried its burden, you must not flinch from
16 your sworn duty but you must bring in a verdict of guilty.

17 The guilt or innocence of the defendant is for
18 you and you alone to determine. The Government, to prevail,
19 must prove the essential elements as I explained them by
20 the required degree of proof. If it succeeds, your verdict
21 must be guilty. If it fails, your verdict must be not
22 guilty.

23 Now, your verdict will be returned orally in
24 open court by Madam Foreman, and of course, since only Mrs.
25 Nemes is now on trial and on only one count, the verdict

1 jg 32

2 will simply be either guilty or not guilty.

3 Now, Madam Foreman, I am going to give you a
4 copy of the first count of the indictment. This is simply
5 for the convenient use of the jury during its deliberations.
6 As I've said, the indictment is not evidence. The defend-
7 ant has pleaded not guilty, which amounts to a denial of
8 the charges in the indictment.

9 If during your deliberations you wish to see
10 any of the exhibits, Madam Foreman should send a note by
11 the marshal. We will send in the requested exhibits to
12 you.

13 If you should wish any testimony read to you,
14 likewise Madam Foreman should send a note through the marshal.
15 Your request will be considered, and, if granted, arrange-
16 ments will be made.

17 Now we reach that point in the trial where we
18 must say goodbye to our alternate juror. You rendered sig-
19 nificant and signal service service as if you were a member
20 of the twelve jurors. You understand that alternate
21 jurors are essential because if some emergency arises and
22 we lose a juror and must excuse a juror, without alternate
23 jurors we would have to start the trial all over again,
24 with the attendant time and expense.

25 So, Mrs. Miranda, you may retire to the jury

1 jklt

2 room and take your things away so it will be vacated when
3 the jury comes out.

4 (Alternate jurors discharged.)

5 Now, Madam Foreman, ladies and gentlemen of the
6 jury, will you continue to be patient and wait for just a
7 moment in the courtroom in silence while I see counsel at
8 the side bar with the reporter for any last minute instruc-
9 tions of law.

10 (At the side bar.)

11 THE COURT: Does the government have any
12 exceptions?

13 MR. WILSON: No, your Honor.

14 THE COURT: All right. Mr. Russo?

15 MR. RUSSO: I have ~~no exceptions~~ your Honor.

16 I have certain requests which I brought with me
17 to include in the Court's charge.

18 First of all, ~~I request that the Court charge the~~
19 ~~jury that specific intent to advance the objects of the~~
20 ~~conspiracy is necessary, pursuant to the Cangiano case,~~
21 ~~491 F.2nd, 906 --~~

22 THE COURT: ~~It is too late for me to consider~~
23 ~~requests to charge now.~~ As you know, the requests to charge
24 were due on the Friday before we began the trial.

25 MR. RUSSO: I understand that, your Honor. I

1 jglt

2 understand, and I expected these to be covered in the Court's
3 charge on conspiracy, and I feel that it is necessary that
4 the jury be instructed on specific intent.

5 THE COURT: Well, ~~I won't give any more charges~~
6 on that.

7 MR. RUSSO: May I just note some others?

8 THE COURT: Surely.

9 MR. RUSSO: I ~~request that the Court charge the~~
10 ~~jury that those having no knowledge of the conspiracy and~~
11 ~~its objects are not conspirators.~~ I request that the Court
12 charge the jury that before a person can be proven to be a
13 co-conspirator and thereby bound by the acts and statements
14 of the other co-conspirators ~~there must be independent proof~~
15 ~~beyond a reasonable doubt of the existence of the conspiracy~~
16 ~~and of the defendant having joined it by his own actions and~~
17 words.

18 THE COURT: Well, I can't add, ~~I won't~~ add to
19 the charge already given.

20 MR. RUSSO: All right.

21 May I just have a moment to check my notes?

22 THE COURT: Surely.

23 (Pause.)

24 MR. RUSSO: That's it, your Honor.

25 THE COURT: All right. Thank you.

JUDGMENT AND PROBATION/COMMITMENT ORDER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
:
UNITED STATES OF AMERICA,
:
-against- : No. 76 Cr. 534 (IBW)
:
MANLIO S. SEVERINO, LAWRENCE J.
SEVERINO, and CLARA NEMES, :
:
Defendants. :
-----x

In the present of the attorney for the government the defendant appeared in person on 12/3/76 with counsel Stephen Russo.

PLEA NOT GUILTY

There being a verdict of GUILTY as to ct. 1.

Defendant has been convicted as charged of the offense(s) of unlawfully, wilfully and knowingly combining, conspiring, confederating and agreeing with others to defraud the United States by obstructing and hindering the lawful governmental functions of the Department of Health, Education and Welfare in administering the Medicare and Medicaid Acts.

(Title 18, United States Code Sections 287 and 1001).

The Court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of

the Attorney General or his authorized representative for imprisonment for a period of TWO (2) YEARS, on count 1, pursuant to Title 18, Section 3651, United States Code, on condition the defendant be confined in a jail type institution for a period of TWO (2) MONTHS, the execution of the remainder of the sentence of imprisonment is suspended and the defendant is placed on probation for a period of TWO (2) YEARS subject to the standing probation order of this Court.

Defendant notified of her right to appeal.

Defendant continued on present bail of \$10,000 PRB pending outcome of appeal.

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

Signed By

United States District Judge

INZER B. WYATT

Date 12-3-76

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NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA, :
 :
 -against- : No. 76 Cr. 534 (IBW)
 :
 MANLIO S. SEVERINO, LAWRENCE J. : Hon. Inzer B. Wyatt
 SEVERINO, and CLARA NEMES, :
 :
 Defendants. :
-----x

NOTICE OF APPEAL

Notice is hereby given that CLARA NEMES appeals to the United States Court of Appeals for the Second Circuit from the judgment of conviction entered in this action on December 3, 1976.

Dated: December 13, 1976
New York, New York

ORANS, ELSEN & POLSTEIN
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TO: ROBERT B. FISKE, JR.
United States Attorney

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RECEIVED